CARD 1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 235.

MADERA SUGAR PINE COMPANY, PLAINTIFF IN ERROR,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND GERONIMA VENEGAS, BY JOS. BARCROFT, HER ATTORNEY IN FACT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED DECEMBER 28, 1922.

(28,620)

(28,620)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 285.

MADERA SUGAR PINE COMPANY, PLAINTIFF IN ERROR,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND GERONIMA VENEGAS, BY JOS. BARCROFT, HER ATTORNEY IN FACT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

	Original.	Print.
Proceedings in supreme court of California	1	1
Petition for writ of review and service	1	1
Exhibit A—Findings and award of Industrial Accident Commission of California	10	6
B—Order granting rehearing and notice of intention to amend findings and award	12	7
C—Order amending findings and award	14	9
Order denying petition	16	10
Petition for writ of error and service	17	10
Assignment of errors and service	25	14
Order allowing writ of error and fixing bond	31	16
Writ of error	32	17
Bond on writ of error	36	18
Citation and service	40	21
Stipulation as to transcript	43	22
Clerk's certificate	47	23
Stipulation to consolidate, &c	48	24

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1922.

1 In the Supreme Court of the State of California.

S. F., No. 9993.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Geronima Venegas, by Jos. Barcroft, Her Attorney-in-fact, Respondents.

Petition for Writ of Review.

To the Honorable the Supreme Court of the State of California:

Your petitioner, Madera Sugar Pine Company, a Corporation, respectfully prays for a Writ of Review of this Court to review an award of the Industrial Accident Commission of the State of California, and in this behalf, by this verified petition, respectfully shows:

I.

That your petitioner is now, and at all of the times herein mentioned it has been, a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, with a place for the transaction of corporate business in the State of California and transacting and carrying on its corporate business in said state.

II.

That on the 16th day of June, 1919, Ramon Lopez sustained a fatal injury while in the employ of your petitioner, Madera Sugar Pine Company.

III.

That thereafter, and on or about the 1st day of June, 1920, Geronima Venegas, by her attorney-in-fact, Jos. Barcroft, filed in the office of the Industrial Accident Commission of the State of
2 California, an application for the adjustment of a claim of said Geronima Venegas, wherein it was alleged that she was the mother of said deceased, Ramon Lopez, and a dependent of his. That thereafter your petitioner answered said application and denied that said Geronima Venegas was a dependent of said deceased.

IV.

That thereafter said application came on for hearing before said Commission, at which time evidence was received in support of the following material facts without conflict:

(1) That Ramon Lopez, hereinafter known as the deceased employee, was on the 16th day of June, 1919, in the employ of the defendant Madera Sugar Pine Company, a corporation, as a laborer;

(2) That the Employer at said time was carrying its own insurance under the provisions of the Workmen's Compensation Insurance and Safety Act of 1917.

(3) That the above application has been filed within the time prescribed by law;

(4) That at said time the said employee and employer were subject to the compensation provisions contained in Sections six to thirty-one inclusive of the Workmen's Compensation, Insurance and Safety Act of 1917 and to the jurisdiction of this commission;

(5) That said employee was injured on said day;

(6) That said injury arose out of and occurred during the course of his said employment and was incidental thereto and occurred briefly as follows: While engaged in helping load logs on a log-train, a hook attached to one of the logs gave way, striking the deceased in the back of the head, killing him almost instantly;

3 (7) That no defense is made upon the ground of wilful misconduct or intoxication or that said injury was self-inflicted.

(8) That no medical treatment was necessary;

(9) That the employer was given notice of the injury according to law;

(10) That the age of the employee at the time of the injury was eighteen years and his occupation that of laborer;

(11) That no compensation has been paid;

(12) That the funeral expenses amounting to $135.36 were paid by the defendant as evidenced by receipted bill from R. C. Jay and Son, undertakers of Madera under date of June 1919, same being submitted and marked Exhibit A introduced by the defendant.

That said Geronima Venegas is now, was at the time of said injury and has always been a citizen resident and inhabitant of Mexico and is not now, and has never at any time, been a resident, citizen, and/or inhabitant of the United States or of the State of California; that prior to the time said Lopez entered the employ of petitioner, to-wit, on or about the 20th day of April, 1919, he subscribed his name to a card to said petitioner, embodying his application for employment with said petitioner, on which he stated that he had no person or persons dependent upon him for support; that only one remittance of money was made by said Lopez to said Geronima Venegas after he entered the employ of said petitioner, to-wit: the sum of $110.50 in Mexican money on or about the 14th day of June, 1919; that there is no evidence in the record to show that said

Geronima Venegas relied upon this or any remittances made to her
ly said Lopez for her support or that she was dependent upon him
wholly or partially for her support; that her own uncontro-
4 verted evidence is to the effect that her support and main-
tenance was dependent upon her own earnings, and not
otherwise.

Your petitioner alleges that the foregoing is a fair statement of the material facts presented to said Commission by the uncontradicted evidence and by the stipulations entered into by the parties at the hearing. That your petitioner believes that the questions herein involved are questions of law; that there is no dispute as to the material facts, and that accordingly a further statement of the facts as shown by the evidence is unnecessary.

V.

That upon this state of facts, said Commission thereafter, to-wit, on the 3rd day of August, 1921, made an award in favor of said applicant and against your petitioner in the sum of Four hundred fifty-eight and no/100 ($458.00) Dollars. That a copy of said award, together with the findings upon wh h the same is based, is annexed hereto, made a part hereof, and marked "Exhibit A."

VI.

That within twenty days after the making of said award your petitioner duly served and filed with said Commission a verified petition for a rehearing of said cause, and in said petition and the memorandum of points and authorities accompanying the same, fully and specifically set forth the grounds upon which it claimed, and upon which said award was, unjust and unlawful.

That thereafter, to-wit, on or about the 30th day of August, 1921, said Commission made a certain order denying a rehearing on all of the grounds set forth in your petitioner's petition therefor, as aforesaid, except that it expressed its intention to amend said Findings and Award (i. e., "Exhibit A") as follows, to-wit:

"Notice is hereby given to the parties hereto that it is the intention of this Commission, unless good cause to the contrary is shown within ten days from the date hereof to amend said Findings and award by finding that the annual amount devoted by the said employee to the support of the applicant at the time of his injury was the sum of $135.00; that therefore there is due to the applicant death benefit payable by defendant in the total sum of $405.00, and that the whole of said death benefit has accrued and become payable; and to amend said award by striking out the figures '$458.00' and inserting in place thereof the figures $405.00."

That a copy of said order is annexed hereto, made a part hereof, and marked "Exhibit B."

That thereafter, to-wit, on or about the — day of ——, 1921,

said Commission made its Findings and Award in favor of said Geronima Venegas and against your petitioner in the sum of Four hundred five and no/100 ($405.00) Dollars. That a copy of said last-named Findings and Award is hereto annexed, made a part hereof and marked "Exhibit C."

VII.

That your petitioner does not have the right to appeal from said decision and award of said Commission, and has no plain, speedy and adequate remedy in the ordinary courts of law other than by Writ of Review; that your petitioner is the party beneficially interested in the proceedings; and that the parties interested whose rights will be affected by this petition are your petitioner and the respondents herein.

VIII.

In support of this petition your petitioner avers that said Commission in rendering said decision and making said award acted without and in excess of its jurisdiction and powers; that the facts established by the uncontroverted evidence do not support the
6 findings and award; that the order, award and decision are unreasonable, unjust, and contrary to natural right; that said award was made under the color of the provisions of that certain act of the legislature of this state known as the "Workmen's Compensation, Insurance and Safety Act of 1917" (Chapter 586, Laws of 1917) as amended; that said Act, and the provisions thereof insofar as they purport to authorize the Industrial Accident Commission of the State of California to award compensation to a person who is neither a citizen nor resident of the United States, nor of the State of California, and who was a resident and citizen of a foreign government at the time of the alleged injury, though a dependent of an employee fatally injured by reason of an injury sustained which arises out of and in the course of his employment in this state, is contrary to natural right and justice and is in violation of and contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States of America and Sections 1, 2 and 13 of Article 1 of the Constitution of the State of California.

And your petitioner refers to the accompanying Memorandum of Points and Authorities in support of these grounds it urges for annulling said award.

IX.

That unless said award is set aside by this Court it will be enforced against your petitioner under a writ of execution upon a judgment which will be entered and docketed as provided by said Workmen's Compensation, Insurance and Safety Act; that unless said award is annulled, your petitioner will be deprived of property without due process of law in violation of the aforesaid sections of the constitutions of the United States and of the State of California, and your petitioner claims the benefit and protection of said provisions of said constitution.

7

X.

That by the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917, your petitioner seeking a Writ of Review is required to make application to this Court or to the District Court of Appeal of the Appellate District wherein petitioner resides. Application is made to this court by reason of the fact that this petition presents a new question of importance in that it involves the interpretation and construction of the Workmen's Compensation, Insurance and Safety Act of 1917 insofar as it purports to authorize the award of compensation to a non-resident alien, dependent, and the question of the constitutionality of said statute if it authorizes the Industrial Accident Commission of this state to award such dependent compensation by reason of a fatal injury received by an employee in this state;

That your petitioner is informed and accordingly avers that said questions have never been determined by this Court and the determination thereof affects the rights and liabilities of all the employers in this state who are subject to the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917.

Wherefore, your petitioner prays:

1. That a writ of review issue out of this court to the Industrial Accident Commission of the State of California commanding it to certify fully to this Court at a specified time and place, the records and proceedings in said cause that the same may be inquired into and determined by this Court.

2. That said matters and the questions herein referred to be fully heard and determined by this Court and that it be ordered, adjudged and decreed that the award made by said Industrial

8 Accident Commission of the State of California against your petitioner be annulled, vacated, and set aside.

3. That in the meantime and pending the determination of said matter, said respondents and each of them, be required to desist from further proceedings in said cause to be reviewed, and that said Commission be required to refrain from issuing any copy, certified or otherwise, of said decision or award, or permitting the same to be filed by any clerk of any Superior Court of the State of California.

4. That your petitioner recover its costs herein and have such further or different order or relief as in the premises this Court may deem proper and just.

FEE & RING,
Attorneys for Petitioner.

9 STATE OF CALIFORNIA,
County of Madera, ss:

A. W. Heavenrich, first being duly sworn, upon his oath deposes and says:

That he is an officer of Madera Sugar Pine Company, a corporation, petitioner, to-wit, the assistant Manager and treasurer thereof; that he is authorized to verify this petition and does so for and in its behalf; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged upon information and belief, and as to those matters, that he believes it to be true.

A. W. HEAVENRICH.

Subscribed and sworn to before me this 22nd day of September, 1921.

W. C. RING Jr.,
Notary Public Within and for the County of Madera, State of California.

10 EXHIBIT A."

Before the Industrial Accident Commission of the State of California.

No. 8186.

GERONIMA VENEGAS, by Her Attorney in Fact, JOS. BARCROFT, Applicant,

vs.

MADERA SUGAR PINE COMPANY, a Corporation, Defendant.

Findings and Award.

Filed Aug. 3, 1921.

Applicant's attorney: Jos. Barcroft.
Defendant's attorney: W. C. Ring, Jr.

An application for adjustment of claim for compensation having been filed herein and all parties having appeared and the matter having been regularly heard before L. B. Mallory, Referee, and submitted for decision, this Commission makes its findings and award as follows:

Findings of Fact.

1. Ramon Lopez, while employed as a laborer on June 16, 1919, near Sugar Pine, California, by defendant, Madera Sugar Pine Company, (the employer and employee being then subject to the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917), sustained injury occurring in the course of and arising out of his employment, as follows: While engaged in helping load logs on a log train, a hook attached to one of the logs gave way, striking him in the back of the head, killing him almost immediately.

2. The expenses for the burial of the employee were paid by the defendant in a sum exceeding one hundred dollars.

3. The earnings of the employee were $85.00 a month, the average weekly earnings were $18.63, and 65% thereof is $12.11.

11 4. Geronima Venegas, the applicant herein, is the mother of said employee, and was partially dependent upon him for support at the time of the latter's injury and death; the annual amount devoted by the said employee to the support of the applicant at the time of the said injury of said employee was the sum of $156.00; therefore there is due to the applicant a death benefit payable by defendant in the total sum of $458.00, payable in weekly instalments of $12.11 each, commencing from the 17th day of June, 1919; and the whole amount of said death benefit has accrued and become payable, and no part thereof has been paid.

5. The applicant's attorney, Jos. Barcroft, is entitled to a lien against said sum for the reasonable value of his services in the sum of $75.00.

Award.

Award is therefore made in favor of Geronima Venegas applicant, against Madera Sugar Pine Company, defendant, of a death benefit in the total sum of $458.00, payable to applicant forthwith, less an attorney's fee of $75.00 payable to Jos. Barcroft.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
WILL J. FRENCH,
A. J. PILLSBURY, *Commissioners.*

Dated at San Francisco, California, this 3rd day of August, 1921.
Attest:
[SEAL.] H. L. WHITE, *Secretary.*

12 "EXHIBIT B."

Before the Industrial Accident Commission of the State of California.

No. 8186.

GERONIMA VENEGAS, by Her Attorney in Fact, Jos. BARCROFT,
Applicant,
vs.
MADERA SUGAR PINE COMPANY, a Corporation, Defendant.

Order Granting Rehearing and Notice of Intention to Amend Findings and Award.

Aug. 30, 1921.

Findings and Award having been made herein on August 3, 1921; and the defendant, Madera Sugar Pine Company, having on August 11, 1921, filed its Petition for Rehearing; and

This Commission being of the opinion, and so finding, that it was the intention of the Legislature in adopting the Workmen's Compensation, Insurance and Safety Act of 1917 to provide for compensation to non-resident aliens for the death of an employee upon whom they were dependent for support, and that such Act and such provision are not unconstitutional; and further being of the opinion and so finding that the employee herein, Ramon Lopez, devoted to the support of the applicant during the period of 285 days immediately prior to his death the sums of $40.00 and $65.00 in United States money, a total of $105.00, and that at said rate the annual amount devoted would be and was the sum of $135.00; and that three times said amount of $135.00 is $405.00, which is the amount to which the applicant is entitled herein; and that this Commission was in error in finding that the annual amount devoted to applicant by said Ramon Lopez was $156.00, and in awarding to applicant the sum of $458.00;

Now, therefore, it is ordered that said Petition for Rehearing be, and it is hereby, granted; and

13 Notice is hereby given to the parties hereto that it is the intention of this Commission, unless good cause to the contrary is shown within ten days from the date hereof to amend said Findings and Award by finding that the annual amount devoted by the said employee to the support of the applicant at the time of his injury was the sum of $135.00; that therefore there is due to the applicant a death benefit payable by defendant in the total sum of $405.00, and that the whole of said death benefit has accrued and become payable; and to amend said award by striking out the figures "$458.00" and inserting in place thereof the figures $405.00.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
WILL J. FRENCH,
A. J. PILLSBURY,
Commissioners.

Dated at San Francisco, California, this 30th day of August, 1921.

Attest:
[SEAL.] H. L. WHITE,
Secretary.

D. A.: R. D. L.

14

"EXHIBIT C."

Before the Industrial Accident Commission of the State of California.

No. 8186.

GERONIMA VENEGAS, by Her Attorney in Fact, JOS. BARCROFT, Applicant,

vs.

MADERA SUGAR PINE COMPANY, a Corporation, Defendant.

Order Amending Findings and Award.

Filed Sep. 20, 1921.

Order granting rehearing having been been made herein on August 30, 1921; and notice having been given by this Commission on said day to the parties hereto that it was the intention of this Commission, unless good cause to the contrary were shown within ten days from said date, to amend the findings and award herein in the manner therein stated; and no cause to the contrary having been shown:

Now, therefore, as and for the decision of this Commission on rehearing, and in accordance with said notice of intention,

It is ordered that the findings and award heretofore made herein be, and they are hereby, amended as follows:

I.

Finding "4" is amended (*a*) by striking out on line 4 of page the following, "$156.00," and inserting in place thereof the following, "$135.00," and (*b*) by striking out on line 6 of page 2 the following, "$458.00," and inserting in place thereof the following, "$405.00";

II.

Said Award is amended by striking out on line 16 of said page following, "$458.00," and inserting in place thereof the following, "$405.00."

And as thus amended said findings and award are hereby approved and confirmed.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
WILL J. FRENCH,
A. H. NAFTZGER,
Commissioners.

Dated at San Francisco, California, this 20th day of September, 1921.

Attest:
[SEAL.] H. I. WHITE, *Secretary.*

16 Due service of copy of the within petition is hereby acknowledged this 26th day of September, 1921.

A. E. GRAUPNER,
Counsel for Respondent Industrial Accident Commission,
By M. M.

Due service of the within Petition for Writ of Review, by copy, is hereby admitted this 24th day of September, 1921.

JOS. BARCROFT,
Attorney-in-fact for Geronima Venegas, Respondent.

Endorsed: In the Supreme Court of the State of California. S. F. 9993. Madera Sugar Pine Company, a corporation, Petitioner vs. Industrial Accident Commission et al., Respondents. Petition for Writ of Review. Filed Sep. 26, 1921. B. Grant Taylor, Clerk, by Tyler, Deputy.

By the COURT:

The within application is denied. (All concur except Sloane, J. who voted for granting of application and Shaw, J. absent).
Dated: Oct. 3/21.

Filed Oct. 3, 1921
B. GRANT TAYLOR,
Clerk,
By TYLER,
Deputy.

17 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Geronima Venegas, by Jos. Barcroft, Her Attorney-in-Fact, Respondents in Error.

Petition for Writ of Error.

To the Honorable Lucien Shaw, Chief Justice of the Supreme Court of the State of California:

The petition of Madera Sugar Pine Company, a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, respectfully shows:

That in the records, proceedings and decisions in the Supreme Court of the State of California, the same being the highest court of said state in which a decision could be had in this proceeding, manifest error has occurred, greatly to the damage of said Madera Sugar Pine Company, a corporation, your petitioner here.

That on the 3rd day of October, 1921, said Supreme Court of the State of California, sitting at San Francisco, California, made and entered a final order and judgment in the above entitled cause in favor of the respondents in error and against your petitioner in error, in which final order and judgment and in the proceedings had in this cause, certain errors were committed to the prejudice of your petitioner, in error, Madera Sugar Pine Company, all of
18 which appear in detail from the assignment of errors filed in this cause with this petition.

That on or about the 16th day of June, 1919, one Ramon Lopez sustained a fatal injury while in the employ of said petitioner in error, Madera Sugar Pine Company, in the State of California.

That thereafter, and on or about the 1st day of June, 1920, the above named Geronima Venegas, by her attorney-in-fact, Jos. Barcroft, filed in the office of the Industrial Accident Commission of the State of California, an application for the adjustment of the claim of said Geronima Venegas for compensation against said petitioner in error, wherein it was alleged that she was the mother of said Ramon Lopez, then deceased, and that during his lifetime she was dependent upon him for support, and that she was a resident of the Republic of Mexico.

That said application did not allege or set forth, and it was not claimed by said Venegas, nor did the evidence adduced at the proceeding subsequently had before said Commission show, said petitioner in error had been legally or otherwise responsible for the death of said Lopez or that said injury was suffered and said death caused by any negligent or wrongful act committed or suffered by it, but said application and claim was based upon the purported right of said Geronima Venegas to compensation under that certain act of the Legislature of the State of California known as the "Workmen's Compensation, Insurance and Safety Act of 1917," as amended. (Laws of 1917, chap. 586, as amended by Laws of 1919, chap. 471).

That thereafter said Company made answer to said application, denying that said Geronima Venegas was a dependent of the said Lopez in his lifetime, whereupon hearings were had before
19 said Commission upon the issues of fact and law thus raised by said application and answer.

That thereafter, to-wit, on the 20th day of September, 1921, said Commission, by an order duly given, made and entered its award in favor of said applicant, Geronima Venegas, and against your petitioner in error, in the sum of $450.00, claiming to act under the color of, and exercise the purported powers vested in it by, said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended; that said award was made over the timely objection of your petitioner in error that said Commission was without jurisdic-

tion or power to make such award to said Geronima Venegas, for and upon the ground that said Geronima Venegas was then and always had been an inhabitant, citizen and resident of the Rpublic of Mexico, and was not then and had never been an inhabitant, citizen, or resident of the United State of America, or of the State of California, or domiciled therein; that said "Workmen's Compensation, Insurance and Safety Act of 1917" as amended, insofar as it purported to authorize and empower said Commission to make such award, was contrary to natural right and justice and in violation of and contrary to Section I of the Fourteenth Amendment to the Constitution of the United States of America, and that the enforcement of such award would deprive your petitioner in error of its property without due process of law.

That thereafter your petitioner in error duly and regularly and in the manner and form prescribed by said "Workmen's Compensation, Insurance and Safety Act of 1917" as amended, filed its petition with said Supreme Court of the State of California, praying that it issue its writ of review to said Commission requiring it to certify the records and proceedings in said cause to said court to be inquired into by said court, and that after an examination thereof, said award be annulled.

20 That it was alleged in said petition that said Commission in making said award acted without and in excess of the powers vested in it by said Act, and that said Act, insofar as it purported to authorize and empower said Commission to make such award to a non-resident alien as aforesaid, was unreasonable, unjust and contrary to natural right, and contravened Section I of the Fourteenth Amendment to the Constitution of the United States, and that the enforcement of said award would deprive your petitioner of its property without due process of law; that your petitioner therein and in said proceeding claimed the benefit and protection of said constitutional amendment.

That said Supreme Court of the State of California did thereafter, to-wit, on the 3rd day of October, 1921, as aforesaid, make its order and judgment refusing to grant said writ of review sought and prayed for by your petitioner, which order and judgment is as follows, to-wit:

(Title of Court and Cause.)

"The within application (for review) denied. All concur except Sloane, J., who voted for granting of application, and Shaw, J., absent."

That said court filed no written or other opinion with said order and judgment.

That there was drawn in question in said proceeding for review in said Supreme Court the power of the Legislature of the State of California to enact a law (i. e., the "Workmen's Compensation, Insurance and Safety Act of 1917" as amended) empowering the Industrial Accident Commission of said state to award compensation to an inhabitant, citizen or resident of Mexico who was not then and never

had been an inhabitant, citizen or resident of the United States of America or of the State of California, or domiciled therein,
21 claiming to be or dependent upon an employee who had received a fatal injury while in the employ of your petitioner in error in the State of California, which said petitioner in error and employer was not legally, or otherwise, responsible for said injury, and which was not caused by its negligence or other wrongful act, under Section 1 of the Fourteenth Amendment to the Constitution of the United States; and also the question of the power and authority of said Industrial Accident Commission to make such award to such non-resident, alien dependent; and also the question of whether or not said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended, was within the police powers of the legislature of the State of California insofar as the same related to the payment of an award to foreign dependents; and also the question of whether or not the enforcement of said award would deprive your petitioner in error of its property without due process of law under said Fourteenth Amendment to the Constitution of the United States.

Wherefore, your petitioner prays that a writ of error returnable to the Supreme Court of the United States be allowed; that a citation be granted and signed; that the bond herewith presented be approved, and that upon compliance with the terms of the statute in such cases made and provided said bond and writ of error may and shall operate — a supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States and the judgment of the said Supreme Court of the State of California be reversed, with instructions to said Supreme Court of the State of California to issue the writ as prayed for to said Industrial Accident Commission, and that said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended, insofar as it authorizes an award of compensation to a non-resident, alien dependent as aforesaid, be declared null and void; and for such other, further or different order or relief as may be deemed just and proper in the premises.

FEE & RING,
H. E. BARBOUR,
Attorneys for Petitioner.

Due service and receipt of a copy of the within Petition for Writ of Error is hereby admitted this 5th day of Dec.,

GERONIMA VENEGAS,
By JOS. BARCROFT,
Her Attorney-in-fact.

Due service and receipt of a copy of the within Petition for Writ of Error is hereby admitted this 30th day of November, 1921.

A. E. GRAUPNER,
By F. B. LORD.

24 [Endorsed:] S. F. 9993. In the Supreme Court of the State of California. Original. Madera Sugar Pine Company, etc., Petitioner in Error, vs. Industrial Acc. Commission, etc., et al., Respondents in Error. Petition for Writ of Error. Filed Dec. 13 1921. B. Grant Taylor, Clerk. By Erb., Deputy. Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

25 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and Geronima Venegas, by Jos. Barcroft, Her Attorney-in-fact, Respondents in Error.

Assignment of Errors.

Now comes Madera Sugar Pine Company, a corporation, petitioner in error in the above entitled cause, and in connection with its petition for a writ of error herein, makes and files the following assignment of errors upon which it will rely for reversal of the order, judgment and decree of this honorable court made on the 3rd day of October, A. D., 1921, as follows, to-wit:

I.

The Supreme Court of the State of California erred in holding that the legislature of said state was empowered to enact a law known as the "Workmen's Compensation, Insurance and Safety Act of 1917," as amended (Laws of 1917, Chap. 586, as amended by Laws of 1919, Chap. 471) authorizing or purporting to authorize the Industrial Accident Commission of the State of California to award the payment of compensation to said Geronima Venegas, who was then and at all times prior thereto had been domiciled in and an inhabitant, citizen and resident of the Republic of Mexico, and who was not then and had never been domiciled in or an inhabitant, citizen or resident of the United States of America or of the State of
26 California, by said petitioner in error because of a fatal injury received by one Ramon Lopez on or about the 16th day of June, 1919, while in the employ of said petitioner in error in the State of California, which injury was not caused by the negligent or other wrongful act of said Madera Sugar Pine Company, and upon which Lopez said Venegas alleged that she was dependent for support.

II.

Said court erred in holding that said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended, is not and was not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States insofar as it purported to or did au-

thorize the Industrial Accident Commission of the State of California to award the payment of compensation by said Madera Sugar Pine Company to said Geronima Venegas, or to any other alleged or dependent person being domiciled in and a citizen, resident and inhabitant of the Republic of Mexico, and who was not at the time of said award, fatal injury, or at any other time or at all, domiciled in or an inhabitant, citizen, or resident of the United States of America or of the State of California.

III.

That said court erred in holding that said Act, in the particulars heretofore mentioned, did not deprive said Madera Sugar Pine Company of its property without due process of law.

IV.

That said court erred in holding that said Act in the particulars heretofore mentioned, and the authority exercised or purported to be exercised thereunder, is within the police power of the legislature of the State of California.

27

V.

That said court erred in holding that said Industrial Accident Commission, in making said award, acted within its powers and authority and that the making of said award was within and not in excess of the jurisdiction of said commission.

VI.

That said court erred in holding that said award did not, and the enforcement of said award would not, deprive said Madera Sugar Pine Company of its property without due process of law.

VII.

That the court erred in holding that the legislature of the State of California is empowered to extend the police power of the State of California beyond the borders of said state.

Wherefore, said petitioner in error prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of California; that the Supreme Court of the United States will reverse said final order and judgment of the Supreme Court of the State of California with instructions to said court to order the Industrial Accident Commission of said state to certify to it the records and proceedings had before said Commission, to be examined and reviewed, and the award made therein on the 20th day of September, 1921, in favor of said Geronima Venegas and against said Madera Sugar Pine Company, in the sum of $405.00,

be annulled, vacated and set aside and held for naught; that it may be restored to all things which it has lost by reason of said
28 judgment and decision, and for such other or further order or relief as may be deemed proper and just.

Dated this 20th day of November, 1921.

MADERA SUGAR PINE CO.,
Petitioner in Error.

FEE & RING,
H. E. BARBOUR,
Attorneys for Petitioner in Error.

29 Due service and receipt of a copy of the within Assignment of Errors is hereby admitted this 5th day of December 1921.

GERONIMA VENEGAS,
By JOS. BARCROFT,
Her Attorney-in-fact.

Due service and receipt of a copy of the within Assignment of Errors is hereby admitted this 30th day of November, 1921.

A. E. GRAUPNER,
By F. B. LORD.

30 [Endorsed:] S. F. 9993. In the Supreme Court of the State of California. Original. Madera Sugar Pine Company, etc., Petitioner in Error, vs. Industrial Accident Commission, etc., et al., Respondents in Error. Assignments of Error. Filed Dec 13, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

31 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Geronima Venegas, by Jos. Barcroft, her Attorney-in-fact, Respondents in Error.

Order Allowing Writ of Error.

The above entitled matter coming regularly on to be heard upon petition of petitioner therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of California, and upon examination of the petition and records in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter;

It is therefore ordered, that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States;

It is further ordered, that said writ of error shall operate as a supersedeas, and the bond for that purpose shall be fixed at the sum of $1,000.00.

Done at San Francisco, California, this 30th day of November, 1921.

LUCIEN SHAW,
Chief Justice of the Supreme Court of the State of California.

Filed in my office this 30th day of November, A. D. 1921.
B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

[Endorsed:] S. F. 9993. Madera Sugar Pine Co. v. Ind's Acc't Comm. Order Allowing Writ of Error. Filed Dec. 13, 1921. B. Grant Taylor, Clerk, by Erb, Deputy.

32 In the Supreme Court of the United States.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Geronima Venegas, by Jos. Barcroft, Her Attorney-in-fact Respondents in Error.

Writ of Error.

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Chief Justice and the Justices of the Supreme Court of the State of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment and order denying the issuance of a writ of review to review the proceedings had in the above entitled matter before the Industrial Accident Commission of the State of California, which is a said supreme court before you or some of you, being the highest urt of law of the said state in which decision could be had in the id proceeding entitled: "Madera Sugar Pine Company, a corpora- n, petitioner, vs. Industrial Accident Commission of the State of lifornia and Geronima Venegas by Jos. Barcroft, her attorney-in- t, respondents," wherein was drawn in question the validity of a tute of or an authority exercised under said State of California, the ground of its being repugnant to the Constitution of the ited States, and the decision was in favor of its validity, and erein was drawn in question a clause of the Constitution of the ited States, and the decision was against the title, right, privilege

and immunity specially set up or claimed under such claus
33 & 34 of such Constitution; and manifest error — happened to th
great damage of the said petitioner, as is said and appear
by its petition. We being willing that error, if any hath been, shoul
be duly corrected, and full and speedy justice done to the partie
aforesaid in this behalf, do command you, if judgment be therei
given, that then, under your seal, distinctly and openly, you sen
the record and proceedings aforesaid, with all things concerning th
same, to the Supreme Court of the United States, together with thi
writ, so that you have the same in the said Supreme Court at Wash
ington within sixty days from the date hereof; that the record an
proceedings aforesaid being inspected, said Supreme Court ma
cause further to be done therein to correct that error what of law an
according to the laws and customs of the United States, should
done.

Witness, the Honorable William H. Taft, Chief Justice of th
United States, this 29th day of November, in the Year of Our Lor
One thousand nine hundred and twenty-one.

[Seal of the U. S. District Court, Southern District of California.]

CHAS. N. WILLIAMS,
Clerk of the United States District Court,
Southern District of California.

35 [Endorsed:] S. F. 9993. In the Supreme Court of th
United States. Original. Madera Sugar Pine Company,
corporation, Petitioner in Error, vs. Industrial Accident Com., etc
et al., Respondents in Error. Writ of Error. Filed Dec. 13, 192
B. Grant Taylor, Clerk, by Erb, Deputy. Fee & Ring, Attorneys an
Counsellors at Law, Madera, California.

36 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Erro

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORN
and Geronima Venegas, by Jos. Barcroft, Her Attorney in Fa
Respondents in Error.

Cost and Supersedeas Bond.

Know all men by these presents: That we, Madera Sugar Pi
Company, a corporation, as principal, and C. K. Lesan and De
Cook, as sureties, are held and firmly bound unto the Industr
Accident Commission of the State of California and Geroni
Venegas in the sum of Five Hundred and no/100 ($500.00) Dolla
to be paid to the said obligees, their successors, representatives, a
assigns; to the payment of which, well and truly to be made,

bind ourselves, our executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 29th day of November, A. D. 1921.

Whereas, the above-named petitioner in error hath prosecuted or is about to prosecute a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled matter by the Supreme Court of the State of California;

Now, therefore, The condition of this obligation is such that if the above-named petitioner in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; other-
37 wise to remain in full force and effect.

And, whereas, said petitioner in error is desirous of staying execution, or any proceeding or proceedings for the purpose of obtaining an execution on the award of the said Industrial Accident Commission of the State of California in the sum of Four hundred five and no 100 ($405.00) Dollars in favor of said Geronima Venegas and against said Madera Sugar Pine Company, a corporation, as set forth in the petition for writ of error filed herein, we do further, in consideration thereof, and of the premises, jointly and severally undertake and promise, and do further acknowledge ourselves further jointly and severally bound in the further sum of One Thousand ($1,000.00) Dollars in lawful money of the United States of America, that if the said judgment from which said writ of error is prosecuted, or any part thereof, be affirmed, or the proceeding upon the writ of error be dismissed, said Madera Sugar Pine Company, a corporation, petitioner in error, will pay, in lawful money of the United States of America, the amount directed to be paid by said judgment and or the award of said Industrial Accident Commission of the State of California, as aforesaid, or the part of such amount as to which the said judgment shall be affirmed, if affirmed only in part, and all damages and costs which may be awarded against the petitioner in error in said proceeding;

The condition of this obligation is such that if said judgment be reversed, or if affirmed in whole or in part and if said Madera Sugar Pine Company, a corporation, shall pay any and all amounts therein directed to be paid, including damages due to delay by reason of the prosecution of said writ of error, then this obligation shall be
38 void; otherwise to remain in full force and effect.

MADERA SUGAR PINE COMPANY,
By J. P. HEMPHILL,
Agent & Assistant Manager,
Principal.

C. K. LESAN,
DEAN COOK,
Sureties.

STATE OF CALIFORNIA,
County of Madera, ss:

On this 29th day of November, A. D. 1921, before me, W. C. Ring, Jr., a Notary Public in and for the said County and state

residing therein, duly commissioned and sworn, personally appeared J. P. Hemphill, known to me to be the Agent and Assistant Manager of said Madera Sugar Pine Company, the Corporation principal in the above Undertaking, and acknowledged to me that he signed the same for and on behalf of said corporation.

[SEAL.] W. C. RING, JR.,
Notary Public in and for the County of Madera,
State of California.

STATE OF CALIFORNIA,
County of Madera, ss:

On this 29th day of November, A. D. 1921, before me, W. C. Ring, Jr., a Notary Public in and for the said County and state residing therein, duly commissioned and sworn, personally appeared C. K. Lesan and Dean Cook, personally known to me to be the persons described in and who executed the within instrument, and acknowledged to me that they executed the same.

[SEAL.] W. C. RING, JR.,
Notary Public in and for the County of Madera,
State of California.

39 STATE OF CALIFORNIA,
County of Madera, ss:

C. K. Lesan and Dean Cook, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself, deposes and says:

That he is a resident and freeholder within said State of California, and is worth the amount written in figures after his signature to this affidavit over and above all his just debts and liabilities, exclusive of property exempt from execution.

C. K. LESAN. ($1,000.00.)
DEAN COOK. ($1,000.00.)

Subscribed and sworn to before me this 29th day of November, A. D. 1921.

[SEAL.] W. C. RING, JR.,
Notary Public in and for the County of Madera,
State of California.

The foregoing bond is approved this 30th day of November 1921.

LUCIEN SHAW,
Chief Justice of the Supreme Court
of the State of California.

[Endorsed:] S. F. 9993. Madera Sugar Pine Co. vs. Ind'l Acc't Comm. Costs and Supersedeas. Bond. Filed Dec. 13, 1921. B. Grant Taylor, Clerk, by Erb, Deputy.

Due service of within admitted November 30, 1921, by receipt of copy.

A. E. GRAUPNER.
By F. B. LORD.

Due service of the within admitted Dec. 5, 1921, by receipt of copy.

GEROMINA VEGREGAS,
By JOS. BANCROFT,
Her Attorney in Fact.

40 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and GERONIMA VENEGAS, by Jos. BARCROFT, Her Attorney-in-fact, Respondents in Error.

Citation.

To the Industrial Accident Commission of the State of California and Geronima Venegas, by Jos. Barcroft, her attorney-in-fact, respondents in Error, Greetings:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of California at San Francisco, California, wherein Madera Sugar Pine Company, a corporation, is petitioner in error, and you and each of you are respondents in error, to show cause, if any there be, why the judgment rendered by the Supreme Court of the State of California against the said petitioner in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Done at San Francisco, California, this 30th day of November, A. D. 1921.

LUCIEN SHAW,
Chief Justice of the Supreme Court of the State of California.

Due service and receipt of a copy of the within Citation is hereby admitted this 5th day of Dec., 1921.

GERONIMA VEGENAS,
By JOS. BARCROFT,
Her Attorney-in-Fact.

Due service and receipt of a copy of the within Citation is hereby admitted this 30th day of November, 1921.

A. E. GRAUPNER,
By F. B. LORD.

42 [Endorsed:] S. F. 9993. In the Supreme Court of th State of California. Original. Madera Sugar Pine Com pany, etc., Petitioner in Error, vs. Industrial Acc. Commission, etc et al., Respondents in Error. Citation. Filed Dec. 13, 1921. H Grant Taylor, Clerk, By Erb, Deputy. Fee & Ring, Attorneys an Counsellors at Law, Madera, California.

43 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Erro

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNI and GERONIMA VENEGAS, by JOS. BARCROFT, Her Attorney-in-fac Respondents in Error.

Stipulation.

It is hereby stipulated, by and between the respective counsel fo petitioner in error and respondents in error, that the followin portions of the record herein shall constitute the transcript of th record on writ of error herein, and that the clerk of the abov entitled court shall transmit such portions of said record to th clerk of the Supreme Court of the United States, duly certified an authenticated as prescribed by the rules and practice of said cour to-wit:

1. This stipulation.

2. Petition to the Supreme Court of the State of California fo writ of review in the action of Madera Sugar Pine Company, c rporation, petitioner, v. Industrial Accident Commission of th State of California and Geronima Venegas by Jos. Barcroft, he attorney-in-fact, respondents, S. F. No. 9993, together with al endorsements thereupon.

3. Order of the Supreme Court of the State of California denyin the issuance of such writ.

4. Original petition for writ of error, together with all endors ments thereon.

5. Original assignment of errors on said writ of error, togethe with all endorsements thereon.

44 & 45 6. Copy of order allowing said writ of error and fixin amount of cost and supersedeas bond, together with al endorsements thereon.

7. Copy of cost and supersedeas bond on writ of error, togethe with all endorsements thereon.

8. Original writ of error, together with all endorsements thereo

9. Original citation with proof of service thereon, and all en dorsements thereon.

10. Certificate of clerk of the Supreme Court of the State of California.

No question of the actual dependency of Geronima Venegas upon deceased Ramon Lopez will be raised.

Dated this 1st day of December, 1921.

FEE & RING,
H. E. BARBOUR,
Attorneys for Petitioner in Error.
ADOLPHUS E. GRAUPNER,
Attorney for Respondent in Error Industrial Accident Commission of the State of California.
JOS. BARCROFT,
Attorney-in-Fact for Respondent in Error Geronima Venegas.

46 [Endorsed:] S. F. 9993. In the Supreme Court of the State of California. Madera Sugar Pine Company, etc., Petitioner in Error, vs. Ind. Acc. Com., etc., et al., Respondents in Error. Stipulation. Filed Dec. 13, 1921. B. Grant Taylor, Clerk By Erb, Deputy. Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

47 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Geronima Venegas, by Joseph Barcroft, Her Attorney-in-fact, Respondents in Error.

Certificate.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing transcript contains the following documents filed and orders entered in the above entitled cause, as provided in the stipulation of attorneys for the respective parties thereto, and as the same appear on file and of record in this office, specifically enumerated as follows, to-wit:

Copy of petition for writ of review and endorsements thereon and order denying petition;
Original petition for writ of error;
Original assignment of errors;
Copy of order allowing writ of error;
Original writ of error;
Copy of Cost and Supersedeas Bond;
Original citation with acknowledgment of service;
Stipulation of attorneys as to portions of record to constitute the transcript to be sent up on writ of error;

that the copies above enumerated are full, true and correct, and that the foregoing constitutes the entire transcript as so stipulated in said cause.

Witness my hand and the official seal of said court, the 13th day of December, 1921.

[Seal of the Supreme Court of California.]

B. GRANT TAYLOR,
Clerk.

By I. ERB,
Deputy.

48 In the Supreme Court of the United States, October Term, 1921.

No. —.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Geronima Venegas, by Her Attorney in Fact, Jos. Barcroft, Respondents in Error.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

Stipulation.

Whereas, a writ of error was issued to the Supreme Court of the State of California by the Supreme Court of the United States on the 29th day of November, 1921, in the above entitled proceeding in error of Madera Sugar Pine Company, a corporation, petitioner in error, vs. Industrial Accident Commission of the State of California and Geronima Venegas by her attorney-in-fact Jos. Barcroft, respondents in error, which writ of error was allowed by the chief justice of the Supreme Court of the State of California on the 30th day of November, 1921; and,

Whereas, a writ of error was issued to the Supreme Court of the State of California by the Supreme Court of the United States on the 23rd day of December, 1921, in the above entitled proceeding in error of Madera Sugar Pine Company, a corporation
49 & 50 plaintiff in error, vs. Industrial Accident Commission of the State of California, and Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, minors, by their guardian ad litem, Rafael Arroyo, defendants in error, which writ of error was allowed

by the chief justice of the Supreme Court of the State of California on the 23rd day of December, 1921; and

Whereas, the same legal propositions are involved in each of said proceedings in error, and the determination of each case must be the same:

Now therefore, it is hereby stipulated by and between respective counsel for petitioner in error and plaintiff in error, and for respondents in error and defendants in error, in each of said proceedings, that each of said proceedings may be submitted to the Supreme Court of the United States on the same briefs and considered by said court at one oral argument, and determined as if said proceedings were one; and further, that the records and files constituting the record in error may be printed and bound together in one volume.

Dated December 23rd, 1921.

H. E. BARBOUR,
FEE & RING,
Attorneys for Petitioner in Error and Plaintiff in Error.
WARREN H. PILLSBURY,
Attorney for Respondent in Error and Defendant in Error, Industrial Accident Commission of the State of California.
JOS. BARCROFT,
Attorney-in-fact for Geronima Venegas, Respondent in Error
WARREN H. PILLSBURY,
Attorney for Defendants in Error Arroyos.

l & 52 [Endorsed:] S. F. 10064. In the Supreme Court of the United States. Original. Madera Sugar Pine Co., etc., etitioner- in Error, vs. Ind. Acc. Comm., etc., et al., Respondents in rror. Madera Sugar Pine Co., etc., Plaintiff in Error, vs. Ind. Acc. omm., etc., et al., Defendants in Error. Stipulation. Filed Dec , 1921. B. Grant Taylor, Clerk, by Erb, Deputy. H. E. Barbour, ee & Ring, Attorneys and Counsellors at Law, Madera, California.

[Endorsed:] File Nos. 28620 &c. Supreme Court U. S. October Term, 1921. Term Nos. 235 & Madera Sugar Pine ., &c., P. E., vs. Industrial Accident Commin. et al. Stipulation consolidate and as to printing. Filed Jan. 24, 1922.

Endorsed on cover: File No. 28,620. California Supreme Court. rm No. 235. Madera Sugar Pine Company, plaintiff in error, Industrial Accident Commission of the State of California and ronima Venegas, by Jos. Barcroft, her attorney-in-fact. Filed cember 28th, 1921. File No. 28,620.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 296.

MADERA SUGAR PINE COMPANY, PLAINTIFF IN ERROR,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED MARCH 7, 1922.

(28,753)

(28,753)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 296.

MADERA SUGAR PINE COMPANY, PLAINTIFF IN ERROR,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

	Original.	Print.
ceedings in supreme court of California	1	1
ition for writ of review	1	1
Exhibit A—Findings and award of Industrial Accident Commission of California	8	5
Exhibit B—Order denying rehearing	10	6
er denying petition	12	7
ulation for transcript	13	7
tion for writ of error and service	17	9
gnments of error and service	25	12
r allowing writ of error	31	15
on writ of error	34	16
ion and service	40	18
of error	43	20
's certificate	47	21

D & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1922.

1 In the Supreme Court of the State of California.

No. S. F., 10064.

MADERA SUGAR PINE COMPANY, a Corporation, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by their Guardian ad Litem, Rafael Arroyo, Respondents.

Petition for Writ of Review.

To the Honorable the Supreme Court of the State of California:

Your petitioner, Madera Sugar Pine Company, a corporation, respectfully prays for a Writ of Review of this Court to review an award of the Industrial Accident Commission of the State of California, and in this behalf, by this verified petition, respectfully shows:

I.

That your petitioner is now, and at all of the times herein mentioned it has been, a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, with a place for the transaction of corporate business in the State of California and transacting and carrying on its corporate business in said State.

II.

That Isaac Arroyo sustained a fatal injury on or about the 20th day of August, 1920, while in the employ of your petitioner, Madera Sugar Pine Company.

III.

That on or about the 6th day of January, 1921, the above named Rafael Arroyo filed his application in writing with the Industrial Accident Commission of the State of California for the purpose of obtaining compensation under the Workmen's Compensation, Insurance and Safety Act of 1917 as amended, and in that respect averred that he was a cousin and brother-in-law of the deceased Isaac Arroyo; and that Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo were dependents of Isaac Arroyo, deceased, and residents of Lamora, Mexico. That thereafter your petitioner answered said application and denied that said Aurora Arroyo, Ramunda Arroyo and Guadalupe Arroyo were, or that any of them was, dependent upon said deceased, and denying that said Isaac Arroyo was killed by reason of an injury arising out of and received in the course of his employment.

IV.

That thereafter said application came on for hearing before said Commission, at which time evidence was received in support of the following material facts without conflict:

(1) That on or about the 20th day of August, 1920, Isaac Arroyo was in the employment of the defendant Madera Sugar Pine Company, erroneously named in the application as Madera Sugar Pine Lumber Company.

(2) That the said Isaac Arroyo sustained an injury on or about August 20th, 1920, resulting in his death on that day, through no negligence, fault or other wrongful act of said petitioner.

(3) That the burial expenses of said deceased employee exceeded the sum of $100, which sum had not been paid by the defendant.

That said Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo are now, were at the time of said injury, and each and all of them have always been, citizens, residents and inhabitants of Mexico, and they nor any of them are not now and have never at any time, been a resident, citizen, and/or inhabitant or residents, citizens or inhabitants, of the United States or of the State of California.

Your petitioner alleges that the foregoing is a fair statement of the material facts presented to said Commission by the uncontradicted evidence and by the stipulations entered into by the parties at the hearing. That your petitioner believes that the questions herein involved are questions of law; that there is no dispute as to the material facts, and that accordingly a further statement of the facts as shown by the evidence is unnecessary.

V.

That upon this state of facts, said Commission thereafter, to-wit, on the 30th day of September, 1921, made an award in favor of said applicants and against your petitioner in the sum of Nine hundred ($900.00) Dollars. That a copy of said award, together with the findings upon which the same is based, is annexed hereto, made a part hereof, and marked "Exhibit A."

VI.

That within twenty days after the making of said award your petitioner duly served and filed with said Commission a verified petition for a rehearing of said cause, and in said petition and the memorandum of points and authorities accompanying the same, fully and specifically set forth the grounds upon which it claimed, and upon which said award was, unjust and unlawful.

That thereafter, to-wit, on or about the 31st day of October, 1921, said Commission made a certain order denying a rehearing on all

of the grounds set forth in your petitioner's petition therefor; that a copy of said order is annexed hereto, made a part hereof, and marked "Exhibit B."

4

VII.

That your petitioner does not have the right to appeal from said decision and award of said Commission, and has no plain, speedy and adequate remedy in the ordinary courts of law other than by Writ of Review; that your petitioner is the party beneficially interested in the proceedings; and that the parties interested whose rights will be affected by this petition are your petitioner and the *responds* herein.

VIII.

In support of this petition your petitioner avers that said Commission in rendering said decision and making said award acted without and in excess of its jurisdiction and powers; that the facts established by the uncontroverted evidence do not support the findings and award; that the order, award and decision are unreasonable, unjust, and contrary to natural right; that said award was made under the color of the provisions of that certain act of the legislature of this state known as the "Workmen's Compensation, Insurance and Safety Act of 1917" (Chapter 586, Laws of 1917) as amended; that said Act, and the provisions thereof insofar as they purport to authorize the Industrial Accident Commission of the State of California to award compensation to a person who is neither a citizen nor resident of the United States, or of the State of California, and who was a resident and citizen of a foreign government at the time of the alleged injury, though a dependent of an employee fatally injured by reason of an injury sustained which arises out of and in the course of his employment in this state, is contrary to natural right and justice and is in violation of and contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States of America and Sections 1, 2 and 13 of Article 1 of the Constitution of the State of California.

5 And your petitioner refers to the accompanying Memorandum of Points and Authorities in support of these grounds it urges for annulling said award.

IX.

That unless said award is set aside by this Court it will be enforced against your petitioner under a writ of execution upon a judgment which will be entered and docketed as provided by said Workmen's Compensation, Insurance and Safety Act; that unless said award is annulled, your petitioner will be deprived of property without due process of law in violation of the aforesaid sections of the constitutions of the United States and of the State of California, and your petitioner claims the benefit and protection of said provisions of said constitutions.

Wherefore, Your petitioner prays:

1. That a writ of review issue out of this court to the Industrial Accident Commission of the State of California commanding it to certify fully to this Court at a specified time and place, the records and proceedings in said cause that the same may be inquired into and determined by this Court.

2. That said matters and the questions herein referred to be fully heard and determined by this Court and that it be ordered, adjudged and decreed that the award made by said Industrial Accident Commission of the State of California against your petitioner be annulled, vacated, and set aside.

3. That in the meantime and pending the determination of said matter, said respondents and each of them, be required to desist from further proceedings in said cause to be reviewed, and that said Commission be required to refrain from issuing any copy, certified
6 or otherwise, of said decision or award, or permitting the same to be filed by any clerk of any Superior Court of the State of California.

4. That your petitioner recover its costs herein and have such further or different order or relief as in the premises this Court may deem proper and just.

FEE & RING,
Attorneys for Petitioner.

7 STATE OF CALIFORNIA,
County of Madera, ss:

W. C. Ring, Jr., being first duly sworn, upon his oath deposes and says:

That he is one of the attorneys for the Madera Sugar Pine Company, the corporation petitioner in the above entitled proceeding, that there is at the present time none of the officers of said corporation in this county, and affiant makes this affidavit for that reason, for and on behalf of said corporation petitioner; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, that he believes it to be true.

W. C. RING, JR.

Subscribed and sworn to before me this 22nd day of November, 1921.

[SEAL.] F. A. FEE,
Notary Public in and for the County of Madera, State of California.

8

EXHIBIT "A."

Before the Industrial Accident Commission of the State of California.

No. 921.

AURORA ARROYO, RAYMUNDA ARROYO, and GUADALUPE ARROYO, Minors, by Their Guardian ad Litem, Rafael Arroyo, Applicants.

vs.

MADERA SUGAR PINE COMPANY, Defendant.

Findings and Award.

Filed Sep. 30, 1921.

Applicant's representative: J. Trasvina.
Defendant's attorneys: Fee & Ring.

An application for adjustment of claim for compensation having en filed herein, and all parties having appeared and the matter aving been regularly heard before W. W. Britton, Referee, and bmitted for decision, this Commission makes its findings and ard as follows:

Findings of Fact.

1. Isaac Arroyo, while employed as a laborer on August 20, 1920, Sugar Pine, California, by defendant Madera Sugar Pine Comny, sustained injury occurring in the course of and arising out his employment, as follows: A tree fell upon him, causing inies resulting in his death on the same day. At said time the ployer and the employee were subject to the provisions of the rkmen's Compensation, Insurance and Safety Act of 1917.

. At the time of said injury the wage of said employee was .00 per month, the average weekly earnings were therefore 63, and 65 per cent thereof is $12.11.

The burial expense of said deceased employee exceeded the sum 100.00 and has not been paid in whole or in part by the defend- There is no evidence as to who has incurred or paid this ex-e, or to whom it is payable.

4. The applicants herein are the sisters of said deceased employee, and at the time of his injury were partially deent upon him for their support. The annual amount devoted he deceased to the support of said applicants was the sum of 00, and the applicants are therefore entitled to a death benefit e total sum of $900.00, payable in weekly payments of $12.11.

The amount of such weekly payments accrued for the period of 59 weeks to and including October 7, 1921, is $714.49.

Award.

Award is made in favor of Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, applicants, against Madera Sugar Pine Company, defendant, of a death benefit in the total sum of $900.00, payable to said applicants, or to either of them, in the sum of $714.49 forthwith, and beginning with October 8, 1921, the weekly sum of $12.11 for the period of approximately 15 1/3 weeks and until the said total amount shall be fully paid.

Provided that supplemental award for burial expense will be made upon the application of any party in interest and sufficient proof thereof.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
WILL J. FRENCH,
A. J. PILLSBURY,
Commissioners.

Attest:

[SEAL.] H. L. WHITE,
Secretary.

W. W. B.: A. M.

10 & 11 EXHIBIT "B."

Before the Industrial Accident Commission of the State of California

No. 9121.

AURORA ARROYO, RAYMUNDA ARROYO, and GUADALUPE ARROYO Minors, by Their Guardian ad Litem, Rafael Arroyo, Applicants

vs.

MADERA SUGAR PINE COMPANY, Defendant.

Order Denying Rehearing.

Oct. 31, 1921.

Findings and Award having been made herein on September 30 1921, and the defendant having on October 7, 1921, filed its Petition for Rehearing, and no good cause appearing therefrom why a rehearing should be granted, and this Commission being satisfied with said Findings and Award:

It is ordered that said Petition for Rehearing be, and it is hereby denied.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
WILL J. FRENCH.
A. J. PILLSBURY.
Commissioners.

Dated at San Francisco, California, this 31st day of October, 1921.

Attest:

[SEAL.] H. L. WHITE,
Secretary.

D. A.: O. D.

12 Due service and receipt of copy of the within petition is hereby acknowledged this 25th day of November, 1921.

A. E. GRAUPNER,
Counsel for Industrial Acc. Comm.

By the COURT:

The within petition is denied.

Dec. 1, 1921. SHAW, *C. J.*

Filed Dec. 1, 1921.
B. GRANT TAYLOR,
Clerk.
By ERB,
Deputy.

[Endorsed:] S. F. 10064. Madera Sugar Pine Co. v. Ind'l Acc't Comm., and Aurora Arroyo et al. Petition for Writ of Error. Filed Nov. 25, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. Filed Dec. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy.

13 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

Stipulation.

It is hereby stipulated, by and between the respective counsel for plaintiff in error and defendants in error, that the following portions of the record herein shall constitute the transcript of the record on

writ of error herein, and that the clerk of the above entitled court shall transmit such portions of said record to the clerk of the Supreme Court of the United States, duly certified and authenticated as prescribed by the rules and practice of said court, to-wit:

1. This stipulation.

2. Petition to the Supreme Court of the State of California for writ of review in the action of Madera Sugar Pine Company, a corporation, petitioner, v. Industrial Accident Commission of the State of California and Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, minors, by their guardian ad litem, Rafael Arroyo, respondents, S. F. No. 10064, together with all endorsements thereupon.

3. Order of the Supreme Court of the State of California denying the issuance of such writ.

4. Original petition for writ of error, together with all endorsements thereon.

14 & 15 5. Original assignment of errors on said writ of error, together with all endorsements thereon.

6. Copy of order allowing said writ of error and fixing amount of cost and supersedeas bond, together with all endorsements thereon.

7. Copy of cost and supersedeas bond on writ of error, together with all endorsements thereon.

8. Original writ of error, together with all endorsements thereon.

9. Original citation with proof of service thereon, and all endorsements thereon.

10. Certificate of clerk of the Supreme Court of the State of California.

It is further stipulated that, for the purpose of determining this proceeding in error, the deceased, Isaac Arroyo, at the time he sustained the fatal injury referred to in the petition for writ of review to the Supreme Court of the State of California, and in the petition for writ of error herein, was in the employ of petitioner in error in the County of Madera, State of California.

It is further stipulated that no question of the sufficiency of the evidence to support the finding that Aurora Arroyo, Raymunda Arroyo and/or Guadalupe Arroyo were partially dependent upon the deceased Isaac Arroyo will be raised in this proceeding in error.

Dated this 23rd day of December, 1921.

H. E. BARBOUR,
FEE & RING,
Attorneys for Plaintiff in Error.
A. E. GRAUPNER,
W. H. PILLSBURY,
Attorney- for Defendants in Error.

16 [Endorsed:] S. F. 10064. In the Supreme Court of the State of California. Original. Madera Sugar Pine Company, etc., Plaintiff in Error, vs. Ind. Acc. Comm., etc., et al., Defendants in Error. Stipulation. Filed Dec. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. H. E. Barbour, Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

17 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

Petition for Writ of Error.

To the Honorable Lucien Shaw, Chief Justice of the Supreme Court of the State of California:

The petition of Madera Sugar Pine Company, a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, respectfully shows:

That in the records proceedings and decisions in the Supreme Court of the State of California, the same being the highest court of said state in which a decision could be had in this proceeding, manifest error has occurred, greatly to the damage of said Madera Sugar Pine Company, a corporation, your petitioner here.

That on the 1st day of December, 1921, said Supreme Court of the State of California, sitting at San Francisco, California, made and entered a final order and judgment in the above entitled cause in favor of the defendants in error and against your plaintiff in error, in which final order and judgment and in the proceedings had in this cause, certain errors were committed to the prejudice of
18 your petitioner, Madera Sugar Pine Company, all of which appear in detail from the assignment of errors filed in this cause with this petition.

That on or about the 20th day of August, 1920, one Isaac Arroyo sustained a fatal injury while in the employ of said plaintiff in error, Madera Sugar Pine Company, in the State of California.

That thereafter, and on or about the 6th day of January, 1921, the above named Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, by their guardian ad litem, Rafael Arroyo, filed in the office of the Industrial Accident Commission of the State of California, an application for the adjustment of the State of California, an application or the adjustment of the claim of said Aurora Arroyo Raymunda Arroyo and Guadalupe Arroyo for compensation against said plaintiff in error, wherein it was alleged that they were the sisters of said Isaac Arroyo, then deceased, and that during his lifetime

they were dependent upon him for suport, and that they were residents of the Republic of Mexico.

That said application did not allege or set forth, and it was not claimed by said applicants, nor did the evidence adduced at the proceeding subsequently had before said Commission show, said plaintiff in error had been legally or otherwise responsible for the death of said Arroyo, or that said injury was suffered and said death caused by any negligent or wrongful act committed or suffered by it, but said application and claim was based upon the purported right of said Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo to compensation under that certain act of the Legislature of the State of California known as the "Workmen's Compensation, Insurance and Safety Act of 1917," as amended. (Laws of 1917, chap. 586, as amended by Laws of 1919, chap. 471.)

19 That thereafter said Company made answer to said application, denying that said Aurora Arroyo, Raymunda Arroyo, and (or) Guadalupe Arroyo were, or that any of them was, dependent on the said Isaac Arroyo in his lifetime, whereupon hearings were had before said Commission upon the issues of fact and law thus raised by said application and answer.

That thereafter, to-wit, on the 30th day of September, 1921, said Commission, by an order duly given, made and entered its award in favor of said applicants, Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, and against your plaintiff in error, in the sum of $900.00, claiming to act under the color of, and exercise the purported powers vested in it by, said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended; that said award was made over the timely objection of your petitioner in error that said Commission was without jurisdiction or power to make such award to said Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, or any of them, for and upon the ground that said Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo were then and each of them always had been, inhabitants, citizens and residents of the Republic of Mexico, and they were not then and had never been inhabitants, citizens or residents of the United States of America, or of the State of California, or domiciled therein; that said "Workmen's Compensation, Insurance and Safety Act of 1917" as amended, insofar as it purported to authorize and empower said Commission to make such award, was contrary to natural right and justice and in violation of and contrary to Section I of the Fourteenth Amendment to the Constitution of the United States of America, and that the enforcement of such award would deprive your petitioner, plaintiff in error herein, of its property without due process of law.

20 That thereafter your plaintiff in error duly and regularly and in the manner and form prescribed by said "Workmen's Compensation, Insurance and Safety Act of 1917" as amended filed its petition with said Supreme Court of the State of California praying that it issue its writ of review to said Commission requiring it to certify the records and proceedings in said cause to said court to be inquired into by said court, and that after an examination thereof said award be annulled.

That it was alleged in said petition that said Commission in making said award acted without and in excess of the powers vested in it by said Act, and that said Act, insofar as it purported to authorize and empower said Commission to make such award to a non-resident alien, or non-resident aliens, as aforesaid, was unreasonable, unjust and contrary to natural right, and contravened Section 1 of the Fourteenth Amendment to the Constitution of the United States, and that the enforcement of said award would deprive this plaintiff in error of its property without due process of law; that your petitioner therein and in said proceedings claimed the benefit and protection of said constitutional amendment.

That said Supreme Court of the State of California did thereafter, to-wit, on the 1st day of December, 1921, as aforesaid, make its order and judgment refusing to grant said writ of review sought and prayed for by your petitioner, which order and judgment is as follows, to-wit:

(Title of Court and Cause.)

"By the Court: The within petition (for writ of review) is denied.

Dated December 1, 1921." SHAW, *C. J.*

That said court filed no written or other opinion with said order and judgment.

21 That there was drawn in question in said proceeding for review in said Supreme Court the power of the Legislature of the State of California to enact a law (i. e., the "Workmen's Compensation, Insurance and Safety Act of 1917" as amended) empowering the Industrial Accident Commission of said state to award compensation to an inhabitant, citizen and resident of Mexico who was not then and never had been an inhabitant, citizen or resident of the United States of America, or of the State of California, or domiciled therein, claiming to be or dependent upon an employee who had received a fatal injury while in the employ of your petitioner, plaintiff in error herein, in the State of California, which said plaintiff in error and employer was not legally, or otherwise, responsible for said injury, and which was not caused by its negligence or other wrongful act, under Section 1 of the Fourteenth Amendment to the Constitution of the United States; and also the question of the power and authority of said Industrial Accident Commission to make such award to such non-resident, alien dependent or dependents; and also the question of whether or not said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended, was within the police powers of the legislature of the State of California insofar as the same related to the payment of an award to foreign dependents; and also the question of whether or not the enforcement of said award would deprive your petitioner in error of its property without due process of law under said Fourteenth Amendment to the Constitution of the United States.

Wherefore, your petitioner prays that a writ of error returnable to the Supreme Court of the United States be allowed; that a citation be granted and signed; that the bond herewith presented be approved,

and that upon compliance with the terms of the statute in such cases made and provided, said bond and writ of error may and do
22 & 23 operate — a supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States and the judgment of the said Supreme Court of the State of California be reversed, with instructions to said Supreme Court of the State of California to issue the writ as prayed for to said Industrial Accident Commission, and that said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended, insofar as it authorizes an award of compensation to a non-resident, alien dependent as aforesaid, be declared null and void; and for such other, further or different order or relie as may be deemed just and proper in the premises.

H. E. BARBOUR,
FEE & RING,
Attorneys for Plaintiff in Error.

Presented to and received by me this 23rd day of December, 1921.
LUCIEN SHAW,
Chief Justice Supreme Court of the State of California.

24 Due service of the within Petition, by copy, admitted this 23 day of December, 1921.
A. E. GRAUPNER,
W. H. PILLSBURY,
Attorneys for Defendants-in-error.

Due service of the within Petition, by copy, admitted this — day of ——, 192-.

——— ———

[Endorsed:] S. F. 10064. In the Supreme Court of the State of California. Original. Madera Sugar Pine Company, etc., Plaintiff in Error, vs. Ind. Acc. Comm., etc., et al., Defendants in Error. Petition for Writ of Error. Filed Dec. 30 1921. B. Grant Taylor, Clerk. By Erb, Deputy. H. E. Barbour, Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

25 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

Assignment of Errors.

Now comes Madera Sugar Pine Company, a corporation, plaintiff in error in the above entitled cause, and in connection with its

petition for a writ of error herein, makes and files the following assignment of errors upon which it will rely for reversal of the order, judgment and decree of this honorable court made on the 1st day of December, A. D. 1921, as follows, to wit:

I.

The Supreme Court of the State of California erred in holding that the legislature of said date was empowered to enact a law known as the "Workmen's Compensation, Insurance and Safety Act of 1917," as amended (Laws of 1917, Chap. 586, as amended by Laws of 1919, Chap. 471) authorizing or purporting to authorize the Industrial Accident Commission of the State of California to award the payment of compensation to said Aurora Arroyo, Raymunda Arroyo and (or) Guadalupe Arroyo, who were then and at all times prior thereto had been domiciled in and inhabitants, citizens and residents of the Republic of Mexico, and who were not then and had never been domiciled in or inhabitants, citizens or residents
26 of the United States of America or of the State of California, by said plaintiff in error because of a fatal injury received by one Isaac Arroyo on or about the 20th day of August, 1920, while in the employ of said plaintiff in error in the State of California, which injury was not caused by the negligent or other wrongful act of said Madera Sugar Pine Company, and upon which Arroyo said Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo alleged that they were, and each of them was, dependent for support.

II.

Said court erred in holding that said "Workmen's Compensation, Insurance and Safety Act of 1917," as amended, is not and was not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States insofar as it purported to or did authorize the Industrial Accident Commission of the State of California to award the payment of compensation by said Madera Sugar Pine Company to said Aurora Arroyo, Raymunda Arroyo, and (or) Guadalupe Arroyo, or to any other alleged or dependent person being domiciled in and a citizen, resident and inhabitant of the Republic of Mexico ,and who was not at the time of said award, fatal injury, or at any other time or at all, domiciled in or an inhabitant, citizen or resident of the United States of America or of the State of California.

III.

That said court erred in holding that said Act, in the particulars heretofore mentioned, did not deprive said Madera Sugar Pine Company of its property without due process of law.

IV.

That said court erred in holding that said Act in the particulars heretofore mentioned, and the authority exercised or purported to

be exercised thereunder, is within the police power of the
27 legislature of the State of California.

V.

That said court erred in holding that said Industrial Accident Commission, in making said award, acted within its powers and authority and that the making of said award was within and not in excess of the jurisdiction of said commission.

VI.

That said court erred in holding that said award did not, and the enforcement of said award would not, deprive said Madera Sugar Pine Company of its property without due process of law.

VII.

That the court erred in holding that the legislature of the State of California is empowered to extend the police power of the State of California beyond the borders of said state.

Wherefore, said plaintiff in error prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of California; that the Supreme Court of the United States will reverse said final order and judgment of the Supreme Court of the State of California with instructions to said court to order the Industrial Accident Commission of said state to certify to it the records and proceedings had before said commission, to be examined and reviewed, and the award made therein on the 30th day of September, 1921, in favor of said Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo and against said Madera Sugar Pine Company, in the sum of $900.00, be annulled, vacated and set aside and held for naught; that it may be restored to all things which it has lost by reason of said judgment and
28 & 29 decision, and for such other or further order or relief as may be deemed proper and just.

Dated this 23rd day of December, 1921.

MADERA SUGAR PINE CO.,
Plaintiff in Error.

H. E. BARBOUR,
FEE & RING,
Attorneys for Plaintiff in Error.

Presented to and received by me this 23rd day of December, 192-.

LUCIEN SHAW,
Chief Justice Supreme Court of the State of California.

30 [Endorsed:] S. F. 10064. In the Supreme Court of the State of California. Original. Madera Sugar Pine Company, etc., Plaintiff in Error vs. Ind. Acc. Comm., etc., et al.

Defendants in Error. Assignment of errors. Filed Dec. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. H. E. Barbour, Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

Due service of the within Assignment of Errors, by copy, is admitted this 23 day of December, 1921.

A. E. GRAUPNER,
W. H. PILLSBURY,
Attorneys for Defendants-in-Error.

Due service of the within Assignment of Errors, by copy, is admitted this — day of ——, 192-.

—— ——.

31 & 32 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

Order Allowing Writ of Error.

The above entitled matter coming regularly on to be heard upon the petition of plaintiff therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of California, and upon examination of the and records in said matter, and desiring to give the plaintiff in error an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter:

It is therefore ordered, that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States:

It is further ordered, that said writ of error shall operate as a supersedeas, and the bond for that purpose shall be fixed at the sum of $2,000.00.

Done at San Francisco, California, this 23d day of December, 1921.

LUCIEN SHAW,
Chief Justice of the Supreme Court
of the State of California.

Filed in my office this 30th day of December, 1921.
B. GRANT TAYLOR,
Clerk of the Supreme Court
of the State of California.
By I. ERB,
Deputy.

33 [Endorsed:] S. F. 10064. In the Supreme Court of the State of California. Copy. Madera Sugar Pine Company, etc., Plaintiff in Error, vs. Ind. Acc. Comm., etc., et al., Defendants in Error. Order allowing writ of error. Filed Dec. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. H. E. Barbour, Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

34 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

Cost and Supersedeas Bond.

Know all men by these presents: That we, Madera Sugar Pine Company, a corporation, as principal, and C. K. Lesan and C. E. Wells as sureties, are held and firmly bound unto the Industrial Accident Commission of the State of California and Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, in the sum of Five hundred and no 100 ($500) Dollars, to be paid to the said obligees, their successors, representatives, and assigns; to the payment of which, well and truly to be made, we bind ourselves, our executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of December, 1921.

Whereas, the above-named plaintiff in error hath prosecuted or is about to prosecute a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled matter by the Supreme Court of the State of California;

Now, therefore, the condition of this obligation is such that if the above-named plaintiff in error shall prosecute its said writ of
35 error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

And, whereas, said plaintiff in error is desirous of staying execution, or any proceeding or proceedings for the purpose of obtaining an execution on the award of the said Industrial Accident Commission of the State of California in the sum of Nine hundred ($900.00) Dollars in favor of said Aurora Arroyo, Raymunda Arroyo and Guadaulupe Arroyo and against said Madera Sugar Pine Company, a corporation, as set forth in the petition for writ of error filed herein we do further, in consideration thereof, and of the premises, jointly and severally undertake and promise, and do further acknowledge ourselves further jointly and severally bound in the further sum of Two thousand ($2,000) Dollars in lawful money of the United States of America, that if the said judgment from which said writ of error is prosecuted, or any part thereof, be affirmed, or the pro-

ceeding upon the writ of error be dismissed, said Madera Sugar Pine Company, a corporation, plaintiff in error, will pay, in lawful money of the United States of America, the amount directed to be paid by said judgment and, or the award of said Industrial Accident Commission of the State of California, as aforesaid, or the part of such amount as to which the said judgment shall be affirmed, if affirmed only in part, and all damages and costs which may be awarded against the plaintiff in error in said proceeding;

The condition of this obligation is such that if said judgment be reversed, or if affirmed in whole or in part and if said Madera Sugar Pine Company, a corporation, shall pay any and all amounts therein directed to be paid, including damages due to delay by reason of the prosecution of said writ of error, then this obligation shall be
36 void; otherwise to remain in full force and effect.

MADERA SUGAR PINE COMPANY,
By E. H. COX,
Vice President and General Manager,
Principal.

C. K. LESAN,
C. E. WELLS, *Sureties.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 23rd day of December, 1921, before me, W. W. Healey, a Notary Public in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared E. H. Cox, known to me to be the Vice President and General Manager of said Madera Sugar Pine Company, the corporation principal in the above undertaking, and acknowledged to me that he signed the same for and on behalf of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in said County, the day and year in this certificate first above written.

[SEAL.]

W. W. HEALEY,
Notary Public in and for said County and State.

& 38 STATE OF CALIFORNIA,
County of Madera, ss:

On this 22nd day of December, A. D. 1921, before me, W. C. Ring, a Notary Public in and for the said County and state, residing therein, duly commissioned and sworn, personally appeared C. K. Lesan and C. E. Wells, personally known to me to be the persons described in and who executed the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in said county, the day and year in this certificate first above written.

[SEAL.]

W. C. RING, JR.,
Notary Public in and for the County of Madera,
State of California.

STATE OF CALIFORNIA,
County of Madera, ss:

C. K. Lesan and C. E. Wells, the persons named in and who s
scribed the foregoing undertaking as the sureties thereto, being s
erally duly sworn, each for himself, deposes and says:

That he is a resident and freeholder within said State of C
fornia, and is worth the amount written in figures after his signat
to this affidavit over and above all his just debts and liabilities,
clusive of property exempt from execution.

C. K. LESAN. ($2,000.00)
C. E. WELLS. ($2,000.00)

Subscribed and sworn to before me this 22nd day of Decemb
A. D. 1921.

[SEAL] W. C. RING, JR.,
Notary Public in and for the County of Madera,
State of California.

The foregoing bond is approved this 23rd day of December, 19
LUCIEN SHAW,
Chief Justice of the Supreme Court
of the State of California.

39 [Endorsed:] S. F. 10064. In the Supreme Court of t
State of California. Copy. Madera Sugar Pine Compan
etc., Plaintiff in Error, vs. Ind. Acc. Comm., etc., et al., Defenda
in Error. Cost and Supersedeas Bond. Filed Dec. 30, 1921.
Grant Taylor, Clerk, by Erb, Deputy. H. E. Barbour, Fee & Ri
Attorneys and Counsellors at Law, Madera, California.

40 & 41 In the Supreme Court of the State of California.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Err

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORN
and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arro
Minors, by Their Guardian ad Litem, Rafael Arroyo, Defenda
in Error.

Citation.

To the Industrial Accident Commission of the State of Califor
and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arro
minors, by their guardian ad litem, Rafael Arroyo, defenda
in error, Greetings:

You are hereby cited and admonished to be and appear at t
Supreme Court of the United States at Washington, D. C., wit
sixty days from the date hereof, pursuant to a writ of error fi

in the Clerk's office of the Supreme Court of the State of California at San Francisco, California, wherein Madera Sugar Pine Company, a corporation, is plaintiff in error, and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered by the Supreme Court of the State of California against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Done at San Francisco, California, this 23rd day of December, 1921.

LUCIEN SHAW,
Chief Justice of the Supreme Court
of the State of California.

Due service of the within Citation, by copy, is hereby admitted, this 23 day of December, 1921.

A. E. GRAUPNER,
W. H. PILLSBURY,
Attorneys for Defendants in Error.

Due service of the within Citation, by copy, is hereby admitted, this — day of ——, 192-.

——— ———.

42 [Endorsed:] S. F. 10064. In the Supreme Court of the State of California. Original. Madera Sugar Pine Co., etc., Plaintiff in Error, vs. Ind. Acc. Comm., etc., and Aurora Arroyo, et al., Defendants in Error. Citation. Filed Dec. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. H. E. Barbour, Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

43 In the Supreme Court of the United States, October Term, 1921.

No. —.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

Writ of Error.

UNITED STATES OF AMERICA:

[United States Circuit Court of Appeals, Ninth Circuit.]

The President of the United States of America to the Honorable the Chief Justice and the Justices of the Supreme Court of the State of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment and order denying the issuance of a writ of review to review the proceedings had in the above entitled matter before the Industrial Accident Commission of the State of California, which is in said supreme court before you or some of you, being the highest court of law of the said state in which decision could be had in the said proceeding entitled: "Madera Sugar Pine Company, a corporation, petitioner, vs. Industrial Accident Commission of the State of California and Aurora Arroyo, Raymunda Arroyo and Guadalupe Arroyo, minors, by their guardian ad litem, Rafael Arroyo, respondents," wherein was drawn in question the validity of a statute of or an authority exercised under said State of California, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, and wherein was drawn in question a clause of the Constitution
44 & 45 of the United States, and the decision was against the title, right, privilege and immunity specially set up or claimed under such clause of such Constitution; and manifest error happened to the great damage of the said petitioner, the plaintiff in error herein, as is said and appears by its petition. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within sixty days from the date hereof; that the record and proceedings aforesaid

being inspected, said Supreme Court may cause further to be done therein to correct that error what of law and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 23d day of December in the year of Our Lord One Thousand nine hundred and twenty-one.

F. D. MONCKTON,
Clerk of the United States Circuit Court
of Appeals for the Ninth Circuit.
By PAUL P. O'BRIEN,
Deputy Clerk.

Due service of the within Writ of Error, by copy, is admitted this 23 day of December, 1921.

A. E. GRAUPNER,
W. H. PILLSBURY,
Attorneys for Defendants in Error.

Due service of the within Writ of Error, by copy, is admitted this — day of ——, 192-.

——— ———.

46 [Endorsed:] S. F. 10064. In the Supreme Court of the United States. Original. Madera Sugar Pine Company, etc., plaintiff in error, vs. Ind. Acc. Comm., etc., et al., Defendants in Error. Writ of Error. Filed Dec. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy H. E. Barbour, Fee & Ring, Attorneys and Counsellors at Law, Madera, California.

47 In the Supreme Court of the State of California.

S. F., 10064.

MADERA SUGAR PINE COMPANY, a Corporation, Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and Aurora Arroyo, Raymunda Arroyo, and Guadalupe Arroyo, Minors, by Their Guardian ad Litem, Rafael Arroyo, Defendants in Error.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify the foregoing to be the record upon writ of error in the above entitled cause, consisting of the following documents, to-wit:

Copy of petition for writ of review, with order of Supreme Court of California denying the same;
Original stipulation as to contents of record on writ of error;
Original petition for writ of error;

Original assignment of errors;
Copy of order allowing writ of error;
Copy of cost and supersedeas bond;
Original citation;
Original writ of error;

all being full, true and correct, as shown by the records and files of my office.

Witness my hand and the seal of the court this 30th day of December, A. D. 1921.

[Seal of Supreme Court of California.]

B. GRANT TAYLOR,
Clerk.

Endorsed on cover: File No. 28,753. California Supreme Court. Term No. 296. Madera Sugar Pine Company, plaintiff in error, vs. Industrial Accident Commission of the State of California et al. Filed March 7th, 1922. File No. 28,753.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

Nos. 235, [redacted] 296

MADERA SUGAR PINE COMPANY,
(a corporation),
vs.
Petitioner in Error,

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and GERONIMA VENEGAS, by Jos. Barcroft (her attorney in fact),
Respondents in Error.

OPENING BRIEF FOR PETITIONER IN ERROR.

H. E. BARBOUR,
WILLIAM C. RING,
Madera, California,
Attorneys for Petitioner in Error.

Table of Contents

Page

Statement and history of the case (No. 235) 1

Stipulation for consideration of cases Nos. 235 and 296 together 5

Case No. 296 5

Procedure in court below on both cases 6

Contentions of petitioner in error in court below 7

Outline of contentions 9

I. General considerations 9

II. Argument and authorities 20

The Act, in compelling the payment of compensation to a non-resident, alien dependent by an employer in California, is unconstitutional and void 20

(a) The Fourteenth Amendment to the Federal Constitution prohibits the states from creating a liability not founded upon an obligation, ex contractu or ex delicto, unless the public interest demands it ... 21

(b) The Fourteenth Amendment to the Federal Constitution prohibits the states from interfering with the right of free contract between employer and employee, unless the public interest demands it 30

(c) Prevention of dependents of employee becoming public charges upon the state is the justification for the Act under the police power 33

Page

(d) The justification for the Act does not exist when applied to a non-resident, alien dependent, who is not a public charge upon this state; wherefore, the Act in compelling the compensation of such person is arbitrary, unreasonable and violative of the Fourteenth Amendment to the Federal Constitution and void 37
The cases at bar..... 37
The limitations upon the police power.. 42

III. The justification for a police regulation must come from within, and not from without the state 48

IV. Analogy in limitation upon taxing power of state 59

V. The case of Western Metal Supply Co. v. Industrial Accident Commission, 172 Cal. 407..... 63

VI. The inconsistent positions of the Industrial Accident Commission 65

VII. Miscellaneous contentions 67
(a) An insurance measure 67
(b) Fallacious analogy with case of injured alien employee 68
(c) The public foots the bills..... 70
(d) Effect upon labor..... 71
(e) Prevention of accidents..... 72
(f) Equal protection of the laws..... 73

Summary and conclusion..... 74

Index to Citations

CASES. Pages

All Hands v. People, 82 Ill. 234 62

Arizona Copper Co. v. Hammer, 250 U. S. 439; 63 L. Ed. 1074-5 ..... 10, 24, 28, 70

Augusta Bank v. Earle, 13 Pet. (U. S.) 419; 10 L. Ed. 274 50

Barbier v. Connolly, 113 U. S. 28; 28 L. Ed. 92, 93.. 41, 53, 54

Bielenberg v. Montana U. Ry. Co., 20 Pac. 314..... 29

Blake v. McClung, 172 U. S. 165..... 73

Bond v. United Railroads of San Francisco, 159 Cal. 270.. 15

Borgnis v. Falk, 133 N. W. 209..... 34

Burk v. Arcata & Mad River R. R. Co., 125 Cal. 364.... 15

Calder v. Bull, 3 Dall. 385, 1 L. Ed. 648..... 25

Camp v. Rogers, 44 Conn. 291..... 23

Canfield v. County of Los Angeles, 157 Cal. 617, 622.... 62

Celefonte v. Camden Coke Co., 75 Atl. 913; 27 L. R. A. (N. S.) 1058..... 16

Chicago etc. R. Co. v. Arkansas, 219 U. S. 453; 31 S. Ct. 275; 55 L. Ed. 290..... 53

Chicago v. Sturges, 222 U. S. 313; 32 Sup. Ct. 92; Ann. Cas. 1913 B, p. 1349..... 29

Citizens Sav. Asso. v. Topeka, 20 Wall. 655, 663; 22 L. Ed. 455 60

Cleveland v. Heisley, 41 Ohio St. 670..... 62

Cole v. La Grange, 113 U. S. 1; 5 S. Ct. 416; 28 L. Ed. 896 60

Comm. v. Alger, 7 Cush. 84..... 54

Coppage v. Kansas, 236 U. S. 1, 14; 59 L. Ed. 441, 446; L. R. A. 1915 C, 960; 35 Sup. Ct. Rep. 240..... 31

Cottrell v. Union Pac. Ry. Co., 21 Pac. 416..... 29

Deal v. Mississippi County, 107 Miss. 464; 18 S. W. 24; 14 L. R. A. 62[illegible] 61

Dent v. West Virginia, 129 U. S. 114; 32 L. Ed. 623..... 29, 53

Dobbins v. City of Los Angeles, 195 U. S. 223; 49 L. Ed. 169, 175 46

Pages

Dodge v. Mission Tp., 107 Fed. 827; 46 C. C. A. 661; 54 L. R. A. 242 60
Dyke v. Erie R. Co., 45 N. R. 113; 6 Am. Rep. 43 51

Edgerly v. Bush, 81 N. Y. 199 50
Ex parte Whitwell, 98 Cal. 73, 78 46

Gibbons v. Ogden, 9 Wheat. 1, 210 ..... 42, 53
Great Western Power Co. v. Pillsbury, 170 Cal. 180 8

Hampshire County v. Franklin County, 16 Mass. 76 23
Hawker v. New York, 170 U. S. 189 29
Hawkins v. Bleakley, 243 U. S. 210; 61 L. Ed. 678; 37 Sup. Ct. Rep. 255; Ann. Cas. 1917 D. 697 ..... 10, 28
Hilton v. Guyot, 159 U. S. 113; 16 S. Ct. 139; 40 L. Ed. 95 50
Holden v. Hardy, 169 U. S. 366; 18 S. Ct. 388; 42 L. Ed. 780 ..... 30, 38
Hollinger v. Davis, 146 U. S. 314; 13 S. Ct. 105; 36 L. Ed. 986 30
Howell v. Bradford, 4 B. W. C. C. 203 35
Hughes v. Ewing, 93 Cal. 414, 419 62
Hunter v. Colfax Consol. Coal Co., 175 Iowa 245; L. R. A. 1917 D 15 37
Hutchinson v. Ozark Land Co., 57 Ark. 554; 22 S. W. 173; 38 Am. St. Rep. 258 61

Indiana v. Pullman Palace Car Co., 16 Fed. 193 59
In re Ackerman, 6 Cal. App. 5 46
In re Cencinino, 31 Cal. App. 239, 243 46
In re Derinza, 118 N. E. 942 ..... 18, 68
In re Junqua, 10 Cal. App. 602 54
In re Lee Sing, 43 Fed. 359 41
In re License Cases, 5 How. (U. S.) 504, 583; 12 L. Ed. 256 53
In re Waite, 99 N. E. 433; 2 N. E. 440 50
In re Wong Wing, 167 Cal. 109; 51 L. R. A. (N. S.) 361. 41
Ives v. South Buffalo R. Co., 201 N. Y. 271, 300; 94 N. E. 431, 442 ..... 34, 37, 45

Jobson v. Cory, 4 B. W. C. C. 204 35

Pages

Kennerson v. Thames To. Co., 89 Conn., 367; L. R. A. 1916 A, 436; 94-a 372 19
Kidd v. Pearson, 128 U. S. (31 L. Ed. 346) 45
Kirkpatrick v. Ind. Acc. Com., 31 Cal. App. 686, 671 ....13, 21
Krzus v. Crow's Nest Pass Coal Co., Ann. Cas. 1912 D 859. 19

Lange v. Schoettler, 115 Cal. 388 15
Laurel Hill Cemetery v. San Francisco, 152 Cal. 464; 14 A. & E. Ann. Cas. 1080, 1082 14
Lawton v. Steele, 152 U. S. 132 ..... 40, 58
License Cases, 46 U. S. 5; 12 L. Ed. 256 ..... 41, 44
Lochner v. New York, 198 U. S. 45; 49 L. Ed. 973; 25 Sup. Ct. Rep. 539; 3 Ann. Cas. 1133 54
Lowell v. Boston, 111 Mass. 454; 15 Ann. Rep. 39 46
61

Manistee Lbr. Co. v. Springfield Tp., 92 Mich. 277; 52 N. W. 468 61
Marbury v. Madison, 1 Cranch. 60 61
Martin v. Hunter, 1 Wheat. (U. S.) 304, 326; 4 L. Ed. 97. 42
Matter of Jacobs, 98 N. Y. 108 53
Matter of Jensen, 44 N. Y. Appl. Div. 509; 60 N. Y. Supp. 933 ..... 42, 46
Matter of Stoltenberg, 21 Cal. App. 722 61
Mayor, etc. of New York v. Miln, 11 Peters 102, 133 41
Mead v. Acton, 139 Mass. 341; 1 N. E. 413 55
Medford v. Learned, 16 Mass. 216 61
Meyler v. Wedding, 107 Ky. 310; 53 S. W. 809; 92 A. S. R. 347 23
Middleton v. Texas Power & Light Co., 249 U. S. 152; 63 L. Ed. 527 51
Mills County v. Brown County, 85 Tex. 391; 20 S. W. 81 .. 10, 28
Minneapolis etc. R. Co. v. Beckwith, 129 U. S. 26; 32 L. Ed. 585 62
Moore Ship Building Corp. v. Ind. Acc. Comm., 61 Cal. Dec. 286, 288 53
Morgan v. Southern Pacific Co., 95 Cal. 510 36
Mountain Timber Co. v. Washington, 243 U. S. 219; 61 L. Ed. 685 15
Mugler v. Kansas, 123 U. S. 661; 31 L. Ed. 210 ..... 11, 28
Mulhall v. Fallon, 177 Mass. 266; 54 L. R. A. 934, 938 .... 48, 54
16

Pages

Muller v. Oregon, 208 U. S. 412; 52 L. Ed. 551; 28 Sup. Ct. Rep. 324; 13 Ann. Cas. 957 ..... 34, 37, 47
Munn v. Illinois, 94 U. S. 113, 134 ..... 29, 30, 53
Murray v. Lehman, 61 Miss. 283 62

N. J. Cent. R. Co. v. Jersey City, 70 N. J. L. 81; 56 A. 239; 61 A. 1118; 52 L. Ed. 896 ..... 51, 60
New York C. R. Co. v. White, 243 U. S. 188; 61 L. Ed. 667 ..... 10, 27, 32, 34, 69
New York etc. R. Co. v. Van Horn, 57 N. Y. 473 23
North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 2, 3 .. 11, 21, 30

Ohio and M. Ry. Co. v. Lackey, 78 Ill. 55; 20 Am. Rep. 259 29
O'Keefe v. Lovate, 4 B. W. C. C. 109; 18 H. R. 157 36

Pennsylvania Hospital v. Philadelphia, 245 U. S. 20; 62 L. E. 124, 127 58
People v. N. J. Cent. R. Co., 42 N. Y. 283 51
People v. Parks, 58 Cal. 624 60
People v. Reardon, 184 N. Y. 431; 77 N. E. 970; 112 Am. St. Rep. 628; 8 L. R. A. (N. S.) 314 60
People v. Townsend, 56 Cal. 633 61
Platt v. Oliver, 19 Fed. Cas. No. 11, 116; 2 McLean 267 .. 51
Pierce v. Bekins Va. & Storage Co., 172 N. W. 191 9
Polydore v. Prince, 19 Fed. Cas. No. 11, 257; 1 Ware 402, 410 50
Post v. Burger & Goblke, 216 N. Y. 544; 111 N. E. 350; Ann. Cas. 1916 B. 158 19
Powell v. Pennsylvania, 127 U. S. 678; 32 L. Ed. 253 54
Prince George's County v. Laurel, 70 Md. 443; 17 A. 388; 3 L. R. A. 528 61
Producer's Transportation Co. v. Railroad Com., 176 Cal. 449, 505 8
Providence Bank v. Billings, 4 Pet. (U. S.) 514; 7 L. Ed. 939 51

Quong Ham Wah Co. v. Ind. Acc. Com., No. 638, Adv. Opinions, Supt. Ct. No. 11, 441 ..... 8, 10, 65

Roche v. Washington, 19 Ind. 53, 59; 81 Am. Dec. 376 .. 50
Rose v. Hinley, 4 Cranch. 241 7

Pages

Sanders v. St. Louis etc. Anchor Line, 97 Mo. 26; 10 S. W. 595; 3 L. R. A. 390 51

Second Employer's Liability Cases, (Modonn v. New York, N. H. R. R. Co.) 223 U. S. 1, 47-53; 56 L. Ed. 327, 345, 347; 38 L. R. A. (N. S.) 44; 32 Sup. Ct. Rep. 169 28

Sheetz v. Sheetz, 6 Lane L. Rev. (Pa.) 97 51

Simoneau v. Pacific Electric Ry. Co., 166 Cal. 264 15

Slaughter House Cases, 16 Wall. 36; 21 L. Ed. 394 ..... 54, 73

Soon Hing v. Crowley, 113 U. S. 703 ..... 41, 54

State v. Clausen, 65 Wash. 195; 37 L. R. A. (N. S.) 466; 117 Pac. 1101 ..... 34, 42

State v. Fuller, 39 N. J. L. 576 ..... 45, 62

State v. Metcalf, 65 Mo. App. 681 51

State Tax on Foreign-held Bonds, 15 Wall. (U. S.) 300; 21 L. Ed. 179 59

Steel, foundation of Legal Liability 22

Stoll v. Pac. Const. S. S. Co., 205 Fed. 169 54

Sutherland-Innes Co. v. Evart, 86 Fed. 596; 30 C. C. A. 305 60

The Antelope, 10 Wheat. (U. S.) 66; 122; 6 L. Ed. 268 .. 59

Truax v. Raich, 239 U. S. 33, 41; 60 L. Ed. 131, 135; L. R. A. 1916 D 545; 36 Sup. Ct. Rep. 7, Ann. Cas. 1917 B 283 31

U. S. v. Bevans, 3 Wheat. (U. S.) 336 7

U. S. v. Holmes, 5 Wheat. (U. S.) 412 7

U. S. v. Wilterberger, 5 Wheat. (U. S.) 76 7

Varesick v. British Columbia Copper Co., 12 B. C. 286; Note 3 A. L. R. 1351 19

Victor Chemical Works v. Industrial Board, 113 N. E. 173. 18

Ward v. Maryland, 12 Wall. 418 73

Wasson v. Wayne County, 39 Ohio St. 622; 32 N. E. 472; 17 L. R. A. 795 62

Wesner v. Douglas, 64 N. Y. 91; 21 Am. Rep. 586 61

Western Ind. Co. v. Pillsburg, 170 Cal. 686 ..... 12, 31, 33

Western Metal Supply Co. v. Ind. Acc. Comm., 172 Cal. 407 63

Pages

Western Metal Supply Co. v. Pillsbury, 170 Cal. 686.... 34

Yee Gee v. San Francisco, 235 Fed. 757, 764..... 55
Yick Wo v. Hopkins, 118 U. S. 356.....41, 43

Ziegler v. S. & N. Alabama R. Co., 58 Ala. 594..... 29

ENCYCLOPEDIAS.

12 Corp. Jur., p. 909..... 53
2 Cyc. Law & Proc., p. 107..... 17
36 Cyc., pp. 829-830..... 51

STATUTES.

Acts of Congress, Feb. 4, 1917, June 5, 1920..... 39
Barnes' Federal Code, Supp. 1922, p. 188..... 39
Civil Code, Sec. 3509..... 48
Code of Civil Proc., Secs. 376, 377..... 15
Immigration Act, Chap. 2, Sec. 3700..... 39
Lord Campbell's Act..... 14
U. S. Const., Art. IV, Sec. 2..... 69
Workmen's Compensation Act of 1917, Chapter 586..... 3
Secs. 67-68..... 6
Workmen's Compensation Act of 1917, as amended, Chap. 471, Sec. 6..... 21

TEXT BOOKS.

Austin, Jurisprudence Lecture XII..... 22
Black, Interpretation of Laws, p. 107..... 7
1 Bl. Comm., pp. 40, 41, 54..... 21
2, Boyd, Workmen's Compensation, Sec. 213..... 37
1, Bradbury's Workmen's Comp. Law, p. 584, Sec. 31.... 36
Cooley, Const. Law, p. 846..... 29
Endlich, Interpretation of Statutes, Sec. 169..... 7
Maxwell, Interpretation of Statutes, Sec. 213..... 7
The Common Law, p. 37..... 23
1, Tiedeman, State & Federal Control of Persons and Property, p. 5..... 29
Torts, Judge Cooley..... 23
Webb's Pollock on Torts.....14, 23

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

NOS. 235, 296

MADERA SUGAR PINE COMPANY,
(a corporation),
Petitioner in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and GERONIMA VENEGAS, by Jos. Barcroft (her attorney in fact),
Respondents in Error.

OPENING BRIEF FOR PETITIONER IN ERROR.

Statement and History of the Case.
(No. 235)

Prior to his death, one Ramon Lopez was an employee of the Madera Sugar Pine Company, petitioner in error, engaged as a laborer in the County of Madera, State of California. On the 16th day of June, 1919, while so engaged and employed by

petitioner in error, Lopez suffered a fatal injury, "arising out of and in the course of his employment", resulting in his immediate death. (Rec. Tr. fol. 2.)

The injury was accidental and not proximately caused by the negligence or other wrong of the employer, petitioner in error. (Rec. Tr. p. 2. fol. 2.) Thereafter his mother, Geronima Venegas, by her attorney in fact, Jos. Barcroft, filed an application with the Industrial Accident Commission of the State of California, for the adjustment of her claim for compensation against petitioner in error, she alleging that she was dependent upon the said Lopez for support; also that she was a resident of, and domiciled within, the Republic of Mexico. It appeared at the hearing subsequently had before the Commission that she was a citizen and resident of the Republic of Mexico, and had always been a citizen, and resident thereof, and domiciled therein, and was not, and had never been a citizen and resident of, or domiciled in the State of California or the United States of America. (Rec. Tr. fols. 3-4.)

This proceeding before the Commission resulted in its awarding Geronima Venegas the sum of $405.00 over the protest and timely objection of petitioner in error that it was without jurisdiction or legal authority so to do. (Rec. Tr. fol. 14.) A petition for rehearing, as provided for in the "Workmen's Compensation, Insurance and Safety Act of 1917", (Chapter 586, California Laws 1917) was duly filed

with the Commission by petitioner in error and denied. (Rec. Tr. fol. 5.) Thereafter, a petition for a writ of review was filed with the Supreme Court of the State of California, as provided in said Act, praying that said award be annulled, which petition was subsequently denied. (Rec. Tr. fol. 16.) No written opinion was filed by the state supreme court. A copy of that petition is made a part of the record in error. (Tr. Rec. pp. 1-10, fols. 1-16.)

The award of the Commission here under review was made under color of the authority vested in it by said Workmen's Compensation Act of 1917 (Chap. 586, Laws of 1917, as amended, Chap. 471, Laws of 1919). Sec. 6, of that Act provides:

> (a) Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:
>
> (1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.
>
> (2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.
>
> (3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted.

(4) Where the injury is caused by the serious and wilful misconduct of the injured employee, the compensation otherwise recoverable by him shall be reduced one-half; provided, however, that such misconduct of the employee shall not be a defense to the claim of the dependents of said employee, if the injury results in death, or to the claim of the employee, if the injury results in a permanent partial disability equaling or in excess of seventy per cent of total; *and provided, further*, that such misconduct of said employee shall not be a defense where his injury is caused by the failure of the employer to comply with any provision of law, or any safety order of the commission, with reference to the safety of places of employment; *and provided, further*, that in case of an injury suffered by an employee under sixteen years of age, it shall be conclusively presumed that such injury was not caused by serious and wilful misconduct.

(b) Where such conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this act, shall be the exclusive remedy against the employer for the injury or death; *provided*, that where the employee is injured by reason of the serious and wilful misconduct of the employer, or his managing representative, or if the employer be a partnership, on the part of one of the partners, or if a corporation, on the part of an executive or managing officer or general superintendent thereof, the amount of compensation otherwise recoverable for injury or death, as hereinafter provided, shall be increased one-half any of the provisions of this act as to maximum payments or otherwise to the contrary notwithstanding; *provided, however*, that said increase of award shall in no event exceed two thousand five hundred dollars.

(c) In all other cases where the conditions of compensation do not concur, the liability of the employer shall be the same as if this act had not been passed.

STIPULATION FOR CONSIDERATION OF CASES No. 235 and No. 296 TOGETHER.

It was stipulated between respective counsel that Case No. 235 and Case No. 296, now pending here on writs of error, might be considered together on the same briefs and arguments, since the constitutional questions involved in each were identical. (See Rec. Tr. Case No. 235, pp. 24, 25.) Pursuant to that stipulation, a brief statement of the facts in Case No. 296 will be made.

Case No. 296.

One Isaac Arroyo received fatal injury while in the employ of petitioner in error on August 20th, 1920 (Rec. Tr. fol. 1) resulting in his death on that day, through no negligence, fault or other wrongful act of said petitioner. (Rec. Tr. p. 2, fol. 2.) Thereafter, his sisters, Aurora, Raymunda and Guadalupe Arroyo petitioned the Industrial Accident Commission of the State of California for an award of compensation under said Compensation Act, wherein the foregoing facts appeared, and further that said persons had always been and were then, domi-

ciled in, and citizens and residents of the Republic of Mexico. (Rec. Tr. fol. 3.)

The Commission awarded them $900.00 against this petitioner in error, (Rec. Tr. fol. 3) whereupon, it applied for a rehearing before the Commission, as provided in the Workmen's Compensation Insurance and Safety Act of 1917, which was denied, (Rec. Tr. fol. 3) and thereafter, petitioned the Supreme Court of California, as provided by said Act, for a writ of review, which was denied by that court.

PROCEDURE IN COURT BELOW ON BOTH CASES.

It is to be observed that the procedure practiced by the California Supreme Court for the review of cases adjudicated by the Industrial Accident Commission is dissimilar to the common-law writ of review or certiorari. The court grants or denies the writ upon the petition presented therefor. If the petition is denied, the award stands. If the writ be granted, the record of proceedings before the Commission is transmitted to the court, and the award affirmed, modified or annulled. (Laws of 1917, Chap. 586, Secs. 67-68.)

In these cases the Supreme Court of California denied the application for the issuance of the writ. (Case No. 235, Rec. Tr. fol. 16; Case No. 296, Rec. Tr. fol. 12.) It had before it for the purposes of decision in each case the petition for the writ attached to which was a copy of the findings and

award of the Commission. Therefore, the same constitutional questions were there presented upon the same record presented here.

Contentions of Petitioner in Error in Court Below.

Petitioner in error made the following contentions in opposition to the award before the Industrial Accident Commission and the Supreme Court of California:

FIRST: That the Workmen's Compensation Insurance and Safety Act of 1917, as amended, did not, by a fair and reasonable construction and operation of its terms, apply or extend to non-resident, alien dependents who are not residents of, nor domiciled in the State of California, or the United States.

Rose v. Hinley, 4 Cranch, 241;
U. S. v. Bevans, 3 Wheat. (U. S.) 336;
U. S. v. Wilterberger, 5 Wheat. (U. S.) 76;
U. S. v Holmes, 5 Wheat. (U. S.) 412;
Endlich, Interpretation of Statutes, Sec. 169;
Maxwell, Interpretation of Statutes, Sec. 213;
Black, Interpretation of Laws, p. 107.

The contention was bottomed upon the familiar axim of interpretation

"that extra territorium jus dicenti impune non peretur; leges extra territorium non obligant."

SECOND: If the Act did apply to non-resident, ien, deperdents, it was to that extent violative of

the "due process of law" clauses of both Federal and State Constitutions.

Though no opinion was filed by the State Supreme Court, it necessarily construed and interpreted the Act to apply to persons domiciled and residing in countries foreign to the United States. Otherwise, it could not have sustained the jurisdiction of the Industrial Accident Commission to make the awards.

Producer's Transportation Co. v. Railroad Comm., 176 Cal. 449, 505;

Great Western Power Co. v. Pillsbury, 170 Cal. 180.

Since

> "this court is without authority to review and revise the construction affixed to a state statute as to a state matter, by the court of last resort of the state," (*Quong Ham Wah Co. v. Industrial Accident Commission*, No. 638, Adv. Opinions, Sup Ct., No. 11, p. 441, decided March 21, 1921, and cases there cited)

the only questions to be determined here are whether or not the Act so construed is repugnant to the Federal Constitution, and whether or not the award so made deprives petitioner in error of its property without "due process" of law. These are the questions presented in the assignment of errors in each case. (Case No. 235, Rec. Tr. fols. 25-29; Case No. 296, Rec. Tr. fols. 25-30.)

Outline of Contentions.

Petitioner in error contends that the Workmen's Compensation, Insurance and Safety Act of 1917 to the extent that it purports to, or does, authorize or empower the Industrial Accident Commission of the State of California to compel the payment of compensation to a non-resident, alien dependent by an employer in the State of California, whose obligation to make such payment is based on neither a breach of contract or other legal wrong, is an unprecedented violation of Section 2 of the Fourteenth Amendment to the Federal Constitution, and deprives the employer of his property without due process of law.

The Act contravenes this constitutional inhibition in the following particulars:

1. Though its fundamental principles are justified under the police power of the state, in the respect mentioned it extends beyond the limits of the exercise of that power, and is unreasonable, unjust and contrary to natural right; because,

(a) Compelling an employer to compensate the dependent of an employee for an injury suffered through no legal wrong of the employer violates the 14th Amendment to the Federal Constitution, *unless justified as a reasonable exercise of the state's police power.*

(b) It is, likewise, an unwarranted interference with the right of free contract between employer

and employee respecting the status of employment, *unless justified as a reasonable exercise of the state's police power.*

(c) Compelling the compensation of dependents residing in California by the employer is justified on the ground that the state is interested in preventing their becoming public charges.

(d) Compelling the payment of compensation to a non-resident, alien dependent is beyond the scope of the justification of the Act, and is a deprivation of property "without due process of law".

I.

GENERAL CONSIDERATIONS.

The questions thus presented have never been determined by this court. Statutes more or less similar in import to the California Workmen's Compensation Act have been enacted in several of the states, all having the same general objects in view. The adjudicated cases of this court disclose that some of those statutes have been here for consideration.

The California Act was considered to a limited extent in *Quong Ham Wah Co. v. Industrial Accident Comm., supra;* the Arizona Act in *Arizona Copper Co. v. Hammer*, 250 U. S. 400; 63 L. Ed. 1058; the Iowa Act in *Hawkins v. Bleakley*, 243 U. S. 210; 61 L. Ed. 678; the New York Act in *New York C. R. Co. v. White*, 243 U. S. 188; 61 L. Ed. 667; the Texas Act in *Middleton v. Texas Power & Light Co.*,

249 U. S. 152; 63 L. Ed. 527, and the Washington Act in *Mountain Timber Co. v. Washington*, 243 U. S. 219; 61 L. Ed. 685.

An examination of the opinions delivered by the appellate courts of the several states likewise reveals that the precise question here presented has never been determined. Though those courts have considered the constitutional authority of a state to compel the payment of compensation to a non-resident, alien dependent, *the statute involved was not compulsory, upon the employer but elective*, or *the liability created was based upon his own legal wrong*. We would evince an inexcusable lack of appreciation of the seriousness of the issues presented and a want of gratitude, not to be commended, for the untiring efforts of this court in an effort to reach a just conclusion, did we, at the expense of space, fail to bring these decisions to the court's attention.

At the outset, it is to be observed that this Act is compulsory, i. e., the employers therein designated, of which petitioner in error is one, are compelled to accept its terms irrespective of their own wish and will, and finally, that the liability created is not founded upon any wrong, legal or moral, or default of the employer.

In support of the assertion that the liability is neither *ex contractu* or *ex delicto*, reference may be had to the following from

North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 2, 3,

where the distinction between an *elective* and *compulsory* statute is clearly pointed out:

> "The case is before us on rehearing. Our former decision upholding the jurisdiction of the commission, was based on the theory that the workmen's compensation law entered into and became a part of the contract of employment, that where such contract was made in this state, the statute fixed the rights of the parties with respect to any injury arising out of the employment, wherever such injury might occur.
>
> "Upon further study, *we are satisfied that this now is not tenable. The liability of the employer to pay compensation arises from the law itself, rather than from any agreement of the parties. The law operates upon a status*, i. e., that of employer and employee, and affixes certain rights and obligations to that status. True, the relation of employer and employee has its inception in a contract, but, once the relation is created, its incidents, depend not upon the agreement of the parties, but upon the provisions of the law. Our decisions upholding the validity of this legislation have emphasized and found support in, the proposition that the statute is one regulating the rights and obligations attaching to the status of employer and employee. Western Indemnity Co. v. Pillsbury, 170 Cal. 686, 699; 151 Pac. 398; 10 N. C. C. A. 1; Western Metal Supply Co. v. Pillsbury, 172 Cal. 407; 156 Pac. 491. If the right to compensation rested upon contract, it would seem to follow that such right would exist only in cases of employment under agreements made after the passage of the statute. But it has never been supposed that any such limitation could be upheld. There is a manifest difference between a compulsory act, like ours, and elective acts, like the Roseberry

Act of 1911 (Stat. 1911, p. 796) and various statutes in other states, under which the compensation provisions are dependent upon the election or consent of the employer and employee. It may well be said that the rights declared by an elective statute have their origin and sanction in the agreement of the parties to be bound by the statute. *Under a compulsory statute, however, the correlative rights and obligations are not founded upon contract. Nor do they correspond with the legal conception of a tort, since a liability is imposed without regard to the element of wrong doing on the part of the person charged. The obligation is to be defined as a statutory one, attached by law to a given status.*"

In *Kirkpatrick v. Ind. Acc. Commission*, 31 Cal. App. 686, 671, it was said:

"The decisions in negligence cases such as those above named are not necessarily controlling in cases like the present, for the liability of the employer in this case arises, not from any wrong done by him, but from the statute which imposes the liability upon persons, bearing toward each other relation of employer and employee as defined in the statute."

The fundamental question involved being the constitutional power of the state to compel the payment of compensation to a non-resident, alien, dependent, it is deemed proper, in the interest of clarity, to draw clearly the line of demarcation between those decisions found in jurisdictions upholding the power, and the statute here.

A very fundamental distinction is to be observed between those elective statutes, operative in some of

the states where the obligation created is "*ex contracta*" and our own, which is compulsory and abhorrent to all notions of free contract and meeting of minds.

In a second class of cases which we have observed allowing compensation to alien non-residents, the obligation is founded upon the wrong of the employer. The inapplicability of such cases to our own statute must at once be manifest when it is considered that here the element of *wrong* is of no consequence. The force of this distinction is felt when it is found that the *power of the state*, in the first instance, to compel compensation irrespective of fault, exists by reason of a condition which does not obtain here at all, i. e., that of preventing "public charges" upon this state. (A matter to be discussed later.) On the other hand, statutes affording redress to survivors, do so because they have been wronged, though no recovery at all is possible, unless the deceased, had he lived, could have recovered. The survivors stand in his shoes insofar as the "right of a action" is concerned, though the amount of recovery is determined by their own "pecuniary loss".

The first statute of this kind was known as "Lord Campbell's Act" (9 and 10 Vict. chap. 93) and was enacted in 1846. Speaking of this statute, it is said in *Webb's Pollock on Torts:*

> "Instead of abolishing the barbarous rule (*i. e., actio personalis moritur cum persona*) which was the root of the mischief complained of, it created a new and anomalous kind of

right and remedy by way of exception. It is entitled 'An Act for compensating the Families of Persons Killed by Accidents'; it confers a right of action on the personal representatives of a person whose death has been caused by a wrongful act, neglect, or default such that if death had not ensued that person might have maintained an action; but the right conferred is not for the benefit of the personal estate, but 'for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused'. Damages have to be assessed according to the injury resulting to the parties for whose benefit the action is brought, and apportioned between them by the jury." (pp. 77, 78.)

With nearly every other state in the Union, California has a law founded on principles similar to those involved in Lord Campbell's Act. (Code of Civ. Proc., Secs. 376, 377.) It is too well settled here to require discussion, that the damages recoverable consist of the actual "pecuniary loss" to the heirs, etc. (*Morgan v. Southern Pacific Co.*, 95 Cal. 510; *Lange v. Schoettler*, 115 Cal. 388; *Burk v. Arcata & Mad River R. R. Co.*, 125 Cal. 364; *Bond v. United Railroads of San Francisco*, 159 Cal. 270; *Simoneau v. Pacific Electric Ry. Co.*, 166 Cal. 264.)

It is equally well settled that no right of action accrues to such heirs if a right of action would not have vested in the deceased had he lived. Hence, his contributory negligence, or settlement and compromise would defeat such right, and all because the injury which caused his death must have been *wrongful* and the wrong gone uncompensated.

Under such a statute, founding the liability as it does upon a legal wrong, it may plausibly be contended that

> "rights can be offered to such persons, (alien non-residents), and if, as is usually the case, the power that governs them makes no objections, there is nothing to hinder their accepting what is offered." (*Mulhall v. Fallon*, 177 Mass. 266; 54 L. R. A. 934, 938.)

This is a leading case in this country upon the question of the extra-territorial effect of a statute similar to Lord Campbell's Act. It has been frequently cited in favor of such construction of a compensation act as would permit recovery by a non-resident, alien, dependent.

A similar conclusion was reached by the New Jersey Court of Errors and Appeals in *Cetefonte v. Camden Coke Co.*, 75 Atl. 913; 27 L. R. A. (N. S.) 1058, under the New Jersey "Death Act", (Gen. Stat. p. 1188) providing for a recovery by the "widow and next of kin" of one whose death "shall be caused by wrongful act, neglect, or default". It was contended that the "beneficiary for whom the recovery was sought was a non-resident alien, not entitled to the benefits of the Act". But the court said on page 1061:

> "There is much conflict in the cases arising in other jurisdictions under somewhat similar statutes, both in this country and England upon this question. The great weight of authority, however, supports the proposition that non-resident aliens are not excluded from among the beneficiaries." (Citing numerous cases depending upon *Mulhall v. Fallon, supra.*)

It is not our purpose to reconcile the conflict nor is it important here that a conflict exists. The significant point is that the court was dealing with a *wrong* and for which the legislature was empowered to give redress without the aid of the police power. The court further observed:

> "But we think the better reason, as well as the greater weight of adjudged cases, forbids that non-resident aliens be excluded by interpretation, from among the beneficiaries designated in the statute. The decedent, though a foreigner, not being an alien enemy, if he had survived the injury, might have maintained an action therefor, if not otherwise specially disabled by law. 2 Cyc. Law & Proc., p. 107. *The wife, having a vested right in the cause of action resulting from his death should not be excluded as a beneficiary, though a non-resident alien.*"

In the late case of *McGovern v. Philadelphia R. R. Co.*, 235 U. S. 387; 59 L. Ed. 283, the Railroad Employer's Liability Act was held to inure to the benefit of non-resident aliens. The employer's liability was founded on a *wrong*, however, as is pointed out on page 287:

> "The rights and remedies of the statute are the means of executing its policy. If this 'puts burdens on our own citizens for the benefit of non-resident aliens', as said in the Deni case, supra, it is a burden imposed for wrong-doing that has caused the destruction of life."

These cases have been chosen from the many which might be cited allowing a non-resident, alien, dependent to prosecute an action for wrongful

death. The statutes themselves are unlike our "Workmen's Compensation Insurance and Safety Act", but since the rules there laid down have been adopted as rules of construction for "elective" compensation acts, we deemed it advisable to inquire into the foundation of the rule that distinctions might be observed where substantial ground therefor existed.

The Massachusetts Supreme Court in *In re Devinza*, 118 N. E. 942, followed the rule in *Mulhall v. Fallon, supra*, and had before it an elective statute. Said the court on page 945:

> "The theory of the Workmen's Compensation Act is a kind of insurance against accident. * * * Insurance money naturally goes to the beneficiary regardless of geographical boundaries of residence. The deceased employee, although an alien, if he had lived, manifestly would have been entitled to the benefits of the act."

But the provision for insurance was a part of the contract. Insurance is not given under our statute because the employer has contracted to give it, because his obligation is not contractual, but compulsory. We are then brought back to the question of legislative authority to require insurance at all, so that the element of insurance under our statute lends us no aid.

This same rule of construction was adopted by the Illinois Supreme Court in *Victor Chemical Works v. Industrial Board*, 113 N. E. 173, where it was conceded that under an elective act, the legis-

lature had the power to provide for the compensation of non-resident, alien, dependents.

In many of the cases where this rule was discussed, no question of *legislative power* was considered. The court merely concerned itself with the construction of the particular statute.

See:

Pierce v. Bekins Van & Storage Co. (Ia.) 172 N. W. 191;

Kennerson v. Thames To. Co., 89 Conn. 367; L. R. A. 1916 A 436; 94-a 372;

Post v. Burger & Gohlke, 216 N. Y. 544; 111 N. E. 350; Ann. Cas. 1916 B 158;

Krzus v. Crow's Nest Pass Coal Co., Ltd., Ann. Cas. 1912 D 859;

Varesick v. British Columbia Copper Co., 12 B. C. 286; Note 3 A. L. R. 1351.

The cases we have referred to comprise the only classes we have observed which give extra-territorial force to a compensation act. None of them arose from a compulsory act; hence, none of them are useful in solving the present problem. There is no question of legislative power involved in permitting a non-resident, alien, dependent to recover for a legal wrong inflicted upon her by her husband's employer; nor, upon a contract wherein the employer agreed to compensate or pay insurance to his employee's dependents. Those are fundamentally different matters from this one where an employer is compelled to submit to its provisions and pay compensation irrespective of his fault. Here the

power is limited by the justification for the act; and when it appears that its application extends beyond, it is to that extent void. Such, however, is the question to be decided.

II.

ARGUMENT AND AUTHORITIES.

The Act, in compelling the payment of compensation to a non-resident, alien dependent by an employer in California, is unconstitutional and void.

This proposition will be established by reason of the following principles:

(a) The fourteenth amendment to the Federal Constitution prohibits the states from creating a liability not founded upon an obligation, *ex contracto* or *ex delicto, unless the public interest demands it.*

(b) The fourteenth amendment to the Federal Constitution prohibits the states from interfering with the right of free contract between employer and employee, *unless the public interest demands it.*

(c) Prevention of dependents of employee becoming public charges upon the state is the justification for the Act under the police power.

(d) The justification for the Act does not exist when applied to a non-resident, alien dependent, who is not a public charge upon this state; wherefore, the Act in compelling the compensation of such person is arbitrary, unreasonable and violative of the fourteenth amendment to the Federal Constitution and void.

(a) The Fourteenth Amendment to the Federal Constitution prohibits the states from creating a liability not founded upon an obligation ex-contractu or ex-delicto, unless the public interest demands it.

It will not be denied that the Industrial Accident Commission of California derives its sole authority to make any award of compensation from the Workmen's Compensation Insurance and Safety Act of 1917, as amended. (Laws of 1917, Chap. 586, amended by Chap. 471, Laws of 1919.) Nor, is more than a reading of section 6 of the Act and reference to *North Alaska Salmon Company v. Pillsbury, supra*, and *Kirkpatrick v. Ind. Acc. Comm., supra*, necessary to demonstrate that the liability is compulsory upon the employer and exists irrespective of wrong on his part.

Though this government was established to make it possible "that man should pursue his own true and substantial happiness,"—a law said to be above the hand of man to alter (1 Bl. Comm. pp. 40, 41, 54), and though it has become linked in the very bed-rock of our institutions and jurisprudence that one may not "profit by his own wrong", or the faultless and guiltless be made to suffer, we are confronted with a statute which would sweep these precepts away, in contravention of every concept of human, as well as constitutional right.

It has been said that these institutions, these precepts and our system of jurisprudence, which has brought a freedom, joy and prosperity never experienced before to countless thousands of human beings, during the short span which bridges the life

of this republic, may be encroached upon, set aside and even abrogated under the police power of the state. Let us make certain that such would neither be countenanced or tolerated, but for the police power.

In this cause it is unnecessary for us to contend that the state is without constitutional authority to create a system of compensation such as this, between employer and employee. What we do contend is that such legislation would be unconstitutional but for the police power. In other words, a state has no authority to create a liability against one in favor of another without the one has committed some wrong. Nor has it authority to declare that to be wrong which is not inherently wrong. Were it otherwise, the constitutional guarantees to life, liberty and property might as well never have been written, for their existence would depend, upon the whim, caprice or short-sightedness of some element, temporarily in control of a state legislature.

The common-law came to us as a body of rules declaring rights and prohibiting wrongs. It is not a question here of legislative authority to alter these. It is a question of declaring that to be wrong, which is not wrong and basing an obligation thereupon. There must be a standard somewhere. Though there may be "no rights but those which are the creatures of law." (Austin, Jurisprudence Lecture XII) nevertheless, "all law starts more or less from moral roots."

1. *Street, foundation of Legal Liability*, p. 3.

Judge Holmes said in his work on *The Common Law*, p. 37 with reference to legal liability:—

> "It shows that they have started from a moral basis, from the thought that someone was to blame."

And Judge Cooley in his work on Torts (Vol. 1, p. 4):—

> "When, therefore, the law of the land undertakes to declare and protect rights, and establishes a standard of conduct for the purpose, the acts or omissions which disturb or impede the enjoyment of such rights may be treated as legal wrongs or torts, but none others can be."

It seems too elementary to merit argument that wherever a legal obligation is created, it must be founded upon that which is right, and *a fortiori*, an obligation cannot be founded upon a wrong and be permitted to stand.

It is not within the power of a state legislature to create a debt from one person to another without the consent, express or implied, of the person to be charged, or to create a liability in favor of one and against another who has committed no wrong. Such constitutes a deprivation of property without due process of law.

Camp v. Rogers, 44 Conn. 291;
Hampshire County v. Franklin County, 16 Mass. 76;
Medford v. Learned, 16 Mass. 216;
New York, etc. R. Co. v. Van Horn, 57 N. Y. 473;
Webbs, Pollock, Torts, p. 23.

In words teeming with logic and sound judgment, Mr. Justice McKenna expressed the idea better than we can express it, when he said with the approval of Chief Justice White and Justices Van Devanter and McReynolds in *Arizona Copper Co. v. Hammer*, 250 U. S. 434, 436, 63 L. Ed. 1073:

> "It seems to me to be the very foundation of right—of the essence of liberty as it is of morals—*to be free from liability if one is free from fault. It has heretofore been the sense of the law and sense of the world, pervading the regulations of both, that there can be no punishment where there is no blame;* and yet the court now by its decision erects the denial of these postulates of conduct into a principal of law and governmental policy. In other words, it is said to be a benefit to government to put the exact discharge of duty under the menace of penalty, and invert the conceptions of mankind of the relation of right and wrong action * * * "

It is a proverb of the Scriptures and a precept of mankind that "to punish the just is not good." (Prov. 17:26.) Throughout the ages and across the boundless span of time, there has been no other concept of liability or punishment than as a retribute for wrong-doing. (Ex. 20:6; 21:24.) Job asked:

> "Is not destruction to the wicked?" (Job 31:3.)

The verdict has never differed:

> "they shall bear the punishment of their iniquity." (Ez. 14:10; Jer. 21:14; Isa. 13:11; 1 Pet. 2:14.)

What is wrong, evil or iniquity? There is an oracle within called conscience which never yet has

failed as a guide, and though men may speak different languages; owe their temporal allegiance to different governments; establish different customs, and live their lives in all of the variations of human existence, growth and development, no monarch, potentate, prince or power, can carve on tablets of stone or print in the statute books of today a law, worthy of that name, declaring rights and prescribing penalties for their violation, which does not parallel those already declared within.

In *Calder v. Bull,* 3 Dall. 385, 1 L. Ed. 648, Mr. Justice Chase laid down certain principles which have not, we trust, been entirely swept away by this "new system of rights and liabilities." Embodying our contention, as they do, we quote *in extenso:*

> "I cannot subscribe to the omnipotence of a state Legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the constitution, or fundamental law, of the state. The people of the United States erected their constitutions, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of the legislative power, they will decide what are the proper objects of it. *The nature and ends of legislative power will limit the exercise of it.* This fundamental principle flows from the very nature of our free republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the federal, or state, Legislature cannot do, without exceeding their authority. There are certain vital prin-

ciples in our free republic governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the government was established. An act of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law in government is established on express compact, and on republican principles, must be determined by the nature of the power on which it is founded. A few instances will suffice to explain what I mean. A law that punishes a citizen for an innocent action, or, in other words, for an act, which, when done, was in violation of no existing law; a law that destroys, or impairs, the lawful private contract of citizens; a law that makes a man a judge in his own cause; *or a law that takes property from A and gives it to B.* It is against all reason and justice, for a people to entrust a Legislature with such powers; and, therefore, it cannot be presumed that they have done it. The genius, the nature, and the spirit of our state governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them. The Legislature may enjoin, permit, forbid, and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right, and prohibit what is wrong; *but they cannot change innocence into guilt; or punish innocence as a crime, or violate the right of an antecedent lawful private contract; or the right of private property. To maintain that our federal, or state, Legislature possesses such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments.*"

Much has been said recently about the vulnerability of the rules of the common-law to alteration and change. Within the limitations of common honesty, natural justice, and human righteousness between man and man, all laws must be subject to change, or advancement and progress is impossible. Nevertheless, the Constitution is the barrier beyond which courts and legislatures cannot pass. In the legislation in question, there can be no doubt but what it does violence to individual rights and creates a liability where there has been no wrong. This court has recognized this, and in *New York Cent. R. Co. v. White*, 243 U. S. 188, 206, 61 L. Ed. 667, 676, declared that it could not "be supported except on the ground that it is a reasonable exercise of the police power of the state."

It has been argued before and may be argued here that since one had no vested interest in a rule of the common law, he could not complain of its abrogation. This, or no other court that we know of, ever laid down such a doctrine without limitation. The limitation is clear and explicit. Whenever a natural right is curtailed or an obligation created where no natural obligation exists, such is only permissible as a constitutional view "*in the public interest*,"—in another way of saying through a reasonable exercise of the state's police power.

Up to the October term, 1918 this court had considered Workmen's Compensation Acts enacted in New York, Iowa, Washington and Texas in the cases of:

Second Employer's Liability Cases (Moudon v. New York, N. H. R. R. Co.) 223, U. S. 1, 47-53, 56 L. Ed. 327, 345, 347, 38 L. R. A. (N. S.) 44, 32 Sup. Ct. Rep. 169.

New York C. R. Co. v. White, supra.

Hawkins v. Bleakley. (Iowa) 243, U. S. 210, 61 L. Ed. 678, 37 Sup. Ct. Rep. 255, Ann. Cas. 1917 D, 697.

Mountain Timber Co. v. Washington, supra.

Middleton v. Texas Power Light Co., 249 U. S. 152, 63 L. Ed. 527, 39 Sup. Ct. Rep. 227.

The Arizona Act was considered in *Arizona Copper Co v. Hammer*, 250 U. S. 400, 63 L. Ed. 1058, where the court summarized the conclusions reached in the foregoing cases, as follows, at p. 1066:

> "These decisions have established the propositions that the rules of law concerning the employer's responsibility for personal injury or death of an employee, arising in the course of the employment, is not beyond alteration by legislation in the *public interest;* that no person has a vested right entitling him to have these any more than other rules of law remain unchanged for his benefit; and that if we exclude arbitrary and unreasonable changes, liability may be imposed upon the employer without fault, and the rules respecting his responsibility to one employee for the negligence of another, and respecting contributory negligence and assumption of risk, are subject to legislative change."

Without undue expansion of the discussion, it will be found that every authority cited in support of

the principle enunciated, limited the authority of the legislature to the "public interest."

Munn v. Illinois, 94 U. S. 113, 134;
Chicago v. Sturges, 222 U. S. 313, 32 Sup. Ct. 92, Ann. Cas. 1913B, p. 1349.

As declaratory of the proposition, that a statute creating liability without fault, and unjustified by the police power, is violative of the "due process of law" clause, see:

Ziegler v. S. & N. Alabama R. Co., 58 Ala. 594;
Cottrell v. Union Pac. Ry. Co., (Idaho) 21 Pac. 416;
Ohio and M. Ry. Co. v. Lackey, 78 Ill. 55, 20 Am. Rep. 259;
Bielenberg v. Montana U. Ry. Co., (Mont.) 20 Pac. 314.

Here is a case where a blameless, innocent employer is required by the Act to compensate a dependent of his employer for an injury suffered. The obligation created is based on no wrong. Manifestly, it is in violation of the "due process" clause of the Federal Constitution, unless justified under the police power.

Dent v. West Virginia, 129 U. S. 114;
Munn v. Illinois, 94 U. S. 113, 134;
Hawker v. New York, 170 U. S. 189;
Cooley, Const. Law, p. 846;
I. Tiedeman, State & Federal Control of Persons and Property, p. 5.

And unless so justified, it is in violation of the 14th and not the 5th amendment to the Federal Constitution, the former being a limitation upon the power of the states, and the latter upon the Federal government.

Holden v. Hardy, 169 U. S. 366; 18 S. Ct. 388; 42 L. Ed. 780;

Hollinger v. Davis, 146 U. S. 314, 13 S. Ct. 105; 36 L. Ed. 986;

Munn v. Illinois, 94 U. S. 113; 24 L. Ed. 77.

(b) The Fourteenth Amendment to the Federal Constitution prohibits the states from interfering with the right of free contract between employer and employee, unless the public interest demands it.

That the status of employer and employee is one depending upon contract and that this Act curtails the freedom and liberty of each of them in contracting with the other, are propositions so apparent in truth, as to hardly require argument.

North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 2, 3.

The Act would render nugatory the agreement which an employer and employee might make exonerating the former from liability to the employee or his dependents when the latter was injured or killed in industry through no fault of the employer. Similar legislative abridgment and interference with personal liberty has, in times past, invoked the condemnation of this court and the highest courts of the several states.

Coppage v. Kansas, 236, U. S. 1, 14, 59 L. Ed. 441, 446, L. R. A. 1915 C 960, 35 Sup. Ct. Rep. 240;

Truax v. Raich, 239 U. S. 33, 41, 60 L. Ed. 131, 135, L. R. A. 1916 D 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917 B 283;

Western Ind. Co. v. Pillsbury, 170 Cal. 686;

Hunter v. Colfax Consol. Coal Co., 175 Iowa 245, L. R. A. 1917 D 15, 154 N. W. 1037, 157 N. W. 145, Ann. Cas. 1917 E 803.

In *Coppage v. Kansas, supra,* this court said:

> "Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

Again, this court observed in *Truax v. Raich,* 239, U. S. 33, 41, 60 L. Ed. 131, 135, L. R. A. 1906 D 545, 36 Sup. Ct. Rep. 7:

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (14th) Amendment to secure."

Its constitutional justification depending on the state's police power in respect to compelling a gift

by the faultless employer, the same justification is sought for the invasion of the right of freedom of contract, a principle which is "fundamental and vital." (*Coppage v. Kansas, supra.*)

This court, in *New York Cent. R. Co. v. White*, 243 U. S. 188, 206, 61 L. Ed. 667, 676, recognized this to be the case when the Workmen's Compensation Law of New York (Chap. 816, Laws 1913; Chap. 41, Laws 1914; Chap. 316, Laws 1914) was before it for consideration. Mr. Justice Pitney, speaking for the court, said with reference to the foregoing excerpts from *Coppage v. Kansas, supra*, and *Truax v. Raich, supra:*

> "It is not our purpose to qualify or weaken either of these declarations in the least. *And we recognize that the legislation under review does measurably limit the freedom of the employer and employee to agree respecting the terms of employment, and that it cannot be supported except on the ground that it is a reasonable exercise of the police power of the State.*"

Further comment upon the foregoing, unrecalled remarks of this court can add no weight to the argument. It clearly appearing that the right of free contract guaranteed by the fourteenth amendment to employers has been infringed, it but remains to be seen, first, whether the curtailment of the right can be justified under the police power, and, second, whether it can be justified in the case of alien dependents.

(c) The prevention of dependents of employees becoming public charges upon the state is the justification for the Act, under the police power.

In the prior discussion it has been established that the California Workmen's Compensation Act, in compelling the compensation of the dependent of an employee by an employer without fault is violative of the fourteenth amendment to the federal constitution in two vital particulars, unless these invasions of personal liberty and the right of property can be justified under the state's police power.

Similar legislation in several of the states has been sustained as to employees. With the case of the right to compensation vested in an employee who is not fatally injured, we are not particularly concerned. Suffice it to observe here, that but for the police power, the legislation could not have been sustained, and is justified in the case of injured employees because of the "public interest," in the employer bearing the burden of supporting industrial casualties rather than the state; the state's interest in restoring disabled employees; the prevention of industrial strife between employer and employee, and for various other reasons, all of which contribute or purport to contribute to the betterment of the state.

New York C. R. Co. v. White, supra;
Mountain Timber Co. v. Washington, supra;
Arizona Copper Co. v. Hammer, supra;
Western Ind. Co. v. Pillsbury, 170 Cal. 686;

Western Metal Supply Co. v. Pillsbury, 172 Cal. 407;

Ives v. South Buffalo R. Co., 201 N. Y. 271, Ann. Cas. 1912 B 156;

Borgnis v. Falk, (Wis.) 133 N. W. 209;

State v. Clausen, 65 Wash. 195, 37 L. R. A. (N. S.) 466, 117 Pac. 1101;

Muller v. Oregon, 208, U. S. 412, 52 L. Ed. 551, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957.

In holding that the New York Act in creating a liability against an innocent and faultless employer in favor of an employee, who might be guilty of the most gross negligence, or in favor of the latter's dependents, and likewise in impairing the freedom of contract between employer and employee as does the California Act, was nevertheless justified under the police power of the state, this court said in *New York C. R. Co. v. White*, *supra*, (61 L. Ed. pp. 676-677):

> "* * * * In our opinion it is fairly supportable upon that ground. And for this reason: The subject-matter in respect of which freedom or (of?) contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare."

Again:

> "We have not overlooked the criticism that the act imposes no rule of conduct upon the employer with respect to the conditions of labor in the various industries embraced within its terms, prescribes no duty with regard to where

the workmen shall work, the character of the machinery tools, or appliances, the rules or regulations to be established, or the safety devices to be maintained. This statute does not concern itself with measures of prevention, which presumably are embraced in other laws. But the interest of the public is not confined to these. *One of the grounds of its concern with the continued life and earning power of the individual is its interest in the prevention of pauperism, with its concomitants of vice and crime.* And in our opinion, laws regulating the responsibility of employers for the injury or death of employees arising out of the employment, bear so close a relation to the protection of the lives and safety of those concerned that they properly may be regarded as coming within the category of police regulations." (citing cases.)

Of the Act in question, it was said in *Western Ind. Co. v. Pillsbury*, 170 Cal. 686:

> "If such a law may be given force, the sanction for it must be found in that legislative authority usually termed the police power."

The foregoing authorities are replete with reasons why the "public interest" in this sort of legislation justifies the infliction of a penalty for innocence upon the faultless employer. In view of the settled condition of the law on the subject, it is useless to attempt to tear down now what is established. Of course, the same reasons which justify the compensation of an employee whose injuries are not fatal, and a deceased employee's dependents are not the same.

Jobson v. Cory, 4 B. W. C. C. 204;
Howell v. Bradford, 4 B. W. C. C. 203;

O'Keefe v. Lovate, 4 B. W. C. C. 109, 18 H. R. 157.

I. *Bradbury's Workmen's Comp. Law*, p. 584, Sec. 21;

Moore Ship Building Corp. v. Ind. Acc. Comm., 61 Cal. Dec. 286, 288.

Where the injured employee survives, the state is said to be interested in the alleviation of his suffering; his physical restoration that he may again contribute in the fields of production; that the uncertainty in the administration of common law remedies, the difference in financial resources between employer and employee were obstacles preventing justice to the employee, resulting in industrial strife, pauperism and crime, all of which conditions are more or less detrimental to the body politic. Where the injury is fatal, the Workmen's Compensation Act of California, and most of the others, have provided for the compensation of those dependent upon the deceased employee. In their case, too, the liability of the employer exists irrespective of his innocence or fault and the absolute fault of the employee. And in their case, too, the imposition of this liability is justified because of the "public interest", or, under the police power of the state.

Wherein is the "public interest" concerned with the fact that his dependents survive the employee? It is not enough to say merely that the public is interested. Such is but a conclusion. We think it must pass unchallenged that the only legitimate interest the state has in the compensation of depend-

ents of employees killed in industry, is to prevent their becoming public charges upon the state, or, as this court said: *"the prevention of pauperism with its concomitants of vice and crime."*

New York C. R. Co. v. White, supra;
Ives v. South Buffalo Ry. Co., supra (Ann. Cas. 1912 B, p. 163);
Muller v. Oregon, supra;
State v. Clausen, supra;
2. *Boyd, Workmen's Compensation*, Sec. 213.

The issue thus presented resolves itself to this: Is it a reasonable exercise of the police power for the state to compel an innocent employer to compensate an alien, non-resident dependent?

(d) The justification for the Act does not exist when applied to a non-resident, alien dependent, who is not a public charge upon this state; wherefore the Act in compelling the compensation of such person is arbitrary, unreasonable and violative of the Fourteenth Amendment to the Federal Constitution, and void.

The cases at bar.

The record very clearly discloses that each of the employees in these two cases were killed through accidental injury and not because of the negligence, fault or other wrongful act of petitioner in error. (Case No. 235: Rec. Tr. fols. 2, 10, 18; Case No. 296: Rec. Tr. fols. 2, 8, 17) and with equal clarity that the dependent Geronima Venegas in Case No. 235, and the dependents, Aurora, Raymunda and Guadalupe Arroyo in Case No. 296, are not now, and never

have been domiciled in, citizens or residents of the United States of America, or of the State of California, but at all of said times have been domiciled in, and residents and citizens of Mexico. (Case No. 235: Tr. Rec. fols. 3, 6, 18, 20, 21; Case No. 296: Tr. Rec. fols. 2, 3, 18, 19, 20, 21.)

As heretofore pointed out, the Workmen's Compensation Insurance and Safety Act of 1917, as amended, does not expressly declare that its provisions shall extend to non-resident, alien dependents. However, in refusing to annul the awards of the Industrial Accident Commission, the lower court necessarily construed the Act to apply to such persons. Having shown that the police power alone justifies the state in compelling the payment of compensation to dependents, the conclusion is irresistible that the constitutional considerations justifying such legislation in behalf of resident dependents, have no foundation when applied to non-resident, alien dependents.

The basis for the distinction is manifest and the reason demanding a different rule in the one case than in the other clear. The resident dependent is a part of the body politic, and his welfare adds or detracts, as the fact may be, to the stability and welfare of the whole. It is this consideration that is at the basis of all police regulations for, as was very aptly said in *Holden v. Hardy*, 169 U. S. 366, 397, 42 L. Ed. 780, 793, 18 Sup. Ct. Rep. 383:

> "The whole is no greater than the sum of all the parts, and when the individual health,

safety and welfare are sacrificed or neglected, the state must suffer."

Hence, should a parent residing in California, lose a son; a wife a husband, or *vice versa,* there is at least a possibility of the survivor becoming a pauper or charge upon the state. Presumably, the compensation paid by the employer will assist in preventing this. This or kindred considerations, justifies the state in compelling the employer to suffer that the majority may gain.

No such justification can be found for compelling the payment of compensation to non-resident, alien dependents domiciled in a foreign land. They form no part of our body politic, add to or detract nothing from our social, economic or moral welfare, and are not public charges upon this state, and do not add to the numbers of indigents and paupers here. Moreover, under Congressional legislation, such never can be public charges upon the United States or the State of California. As immigrants to our shores, they must be denied admittance without they are financially able to sustain themselves. (Immigration Act, Chap. 2, Sec. 3709; Barnes' Federal Code, Supp. 1922, p. 188; Acts of Congress, Feb. 5, 1917, c. 29, Sec. 3, 39 Stat. 875, June 5, 1920, c. 243.) Perforce this provision, "*persons likely to become a public charge*" must not be admitted.

Whatever charitable views we may hold; however much we may desire to assist and fraternize those of foreign lands and notwithstanding the desire to befriend the more unfortunate in countries less ad-

vanced than our own, there is no governmental reason which justifies the State of California in extending the bounty of her police power beyond the border into Mexico, across the sea to China, or over into the wilds of Europe.

However great may be the need in California for legislation to prevent indigent dependents of workmen becoming public charges on this state, and however much may such find justification in the police power, the extent of the power is always limited to the particular necessities of the case. The principle is, therefore, clear, that though the exercise of the power might be perfectly legitimate when applied to one subject, it would be equally unsupportable when applied to another. The bad cannot stand to defeat property rights, merely because part of the legislation, when properly applied is good. While many authorities might be cited, *Laurel Hill Cemetery v. San Francisco*, 152 Cal. 464, 14 A. & E. Ann. Cas. 1080, 1082, aptly illustrates the principle. The right of the city of San Francisco to prohibit interments anywhere within its municipal confines was considered. While the right was declared to exist, the court observed that in a less thickly populated city, or in one where large tracts of comparatively uninhabited land existed, the justification for the exercise of the power in the one case would not exist in the latter, and said:

> "Where a city includes considerable tracts of this character it will not be said that interments anywhere within the corporate limits may be prohibited merely because the territory in-

volved is all included within the boundaries of a city."

The California Chinese Laundry Cases also afford good illustrations of the limits of the power. An ordinance forbidding washing between certain hours in all public laundries within certain limits of a city is good, but one forbidding the carrying on the laundry business within the city at all without the consent of certain officers is invalid.

Barbier v. Connolly, 113 U. S. 27;
Soon Hing v. Crowley, 113 U. S. 703;
Yick Wo v. Hopkins, 118 U. S. 356;
In Re Lee Sing, 43 Fed. 359.

Other illustrations are found in the conceded power of the legislature to regulate the hours of labor; prescribe that certain business must be confined to certain districts and prohibiting the construction of buildings other than certain kinds within prescribed limits. But no one would be heard to contend that this power could extend to prohibiting all labor, all business or the erection of all buildings.

Lawton v. Steele, 152 U. S. 132;
Matter of Stoltenberg, 21 Cal. App. 722;
In Re Wong Wing, 167 Cal. 109, 51 L. R. A. (N. S.) 361.

The question then, is just this:

Because an employer can be compelled to compensate resident dependents, does it also follow that he can be compelled to compensate non-resident alien dependents?

The limitations upon the police power.

It would seem to be implied by some authorities that before the police power all else must be swept away; that once a legislature conceived a sufficient public interest to authorize particular legislation, all else must yield. Such cannot be the law in a constitutional government.

While legislatures are vested with a wide latitude in the exercise of this power, which, "in its ultimate and final analysis * * * is the power to govern," (*State v. Clausen*, 117 Pac. 1101) the power is not above the constitution, or beyond the control of the courts, else the protection for which the one was adopted, and the others created, would be a political heresy.

Gibbons v. Ogden, 9 Wheat. 1, 210;
Marbury v. Madison, 1 Cranch. 60.

It was said in *Matter of Jacobs*, 98 N. Y. 108:

> "The limit of the power cannot be accurately defined, and the courts have not been able or willing definitely to circumscribe it. But the power, however broad and extensive, is not above the constitution. When it speaks its voice must be heeded. It furnishes the supreme law and guide for the conduct of legislators, judges and private persons, and so far as it imposes restraints, the police power must be exercised in subordination thereto."

Those who laid the foundation upon which our institutions rest anticipated the passing fancies, and radical tendencies which, at times, would govern the conduct of subsequent legislatures. The fourteenth amendment is the residuum of our bill of rights. Be-

yond it, legislatures cannot pass. In *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. Ed. 220, 226, this court said:

> "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. *And the law is the definition and limitation of power.* It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and, in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be a government of laws and not of men'. For the very idea that one may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

The limitations placed upon the police power, as defined in *Lawton v. Steele*, 152 U. S. 132, 38 L. Ed. at p. 388, are two-fold. The power is limited to a subject-matter pertaining to the welfare of the state. It must be exercised by reasonable means. Mr. Justice Brown said:

> "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the state may order the destruction of a house falling to decay or otherwise endangering the lives of passersby; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of gambling houses and places where intoxicating liquors are sold. Beyond this, however, the state may interfere wherever the public interest demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require but what measures are necessary for the protection of such interests. *Barbier v. Connolly*, 113 U. S. 27 (28 L. Ed. 92, 93); *Kidd*

v. Pearson, 128 U. S. (31 L. Ed. 346). *To justify the state in thus interposing its authority in behalf of the public, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The legislature may not under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.*"

And in *Ives v. South Buffalo R. Co.*, 201 N. Y. 271, 00, 94 N. E. 431, 442:

"But it is a power which is always subject to the Constitution for in a constitutional government *limitation is the abiding principle, exhibited in its highest form in the Constitution*, as the deliberate judgment of the people, which moderates every claim of right and controls every use of power."

And in *State v. Clausen*, 117 Pac. 1101, 1107:

"It is not meant here to be asserted that the power (the police power) is above the Constitution or that everything done in the name of the police power is lawfully done. It is meant only to be asserted that a law which interferes with personal and property rights is valid only when it tends reasonably to correct some existing evil or promote some interest of the state, and is not in violation of any direct and positive mandate of the Constitution."

See also:

Dobbins v. City of Los Angeles, 195 U. S. 223, 49 L. Ed. 169, 175;

Ex parte Whitwell, 98 Cal. 73, 78;

In Re Ackerman, 6 Cal. App. 5;

In Re Cencinino, 31 Cal. App. 239, 243.

But slight reflection on the maxims upon which the police power is based should at once disclose the vulnerability of this Act in the particular mentioned to the fourteenth amendment. It is said in *Matter of Jacobs*, 98 N. Y. 98, 130.

> "That power is very broad and comprehensive and is exercised to promote the health, comfort, safety and welfare of society. Its exercise in extreme cases is frequently justified by the maxim *salus populi suprema lex est*. It is used to regulate the use of property by enforcing the maxim *sic utere, ut alienum non laedes.*"

Its entire concern is with the body politic. It is recognized only in its application to citizens and residents of the state affected. Its operation is not extended to the health, morality and welfare of a foreign power.

Whether or not the subject-matter of any particular legislation is property referable to the police power, is dependent "*upon its practical operation and effect*".

Mountain Timber Co. v. Washington, 243 U. S. 219, 239, 61 L. Ed. 685, 696;

Lochner v. New York, 198 U. S. 45, 49 L. Ed. 973, 25 Sup. Ct. Rep. 539, 3 Ann. Cas. 1133;

Muller v. Oregon, 208, U. S. 420, 52 L. Ed. 555, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957.

The "practical operation and effect" of this Act, in so far as non-resident, alien, dependents are concerned, is to compel the gift by an employer residing in this country—innocent of the slightest semblance of fault or wrong-doing, unless it be making possible honest employment—to one residing in another land, who owes allegiance to a foreign flag.

By no stretch of the imagination can it be conceived that this policy of enforced charity will better industrial, economic or social conditions in our own state. Whatever economic or social effect the loss of support may have on foreign countries, the remedies must eminate from those sovereign powers and not our own, whose police power is limted to the confines of California.

Certainly the economic, indastrial or social welfare of a foreign government, or any of her residents, is no governmental concern of the State of California, neither is the welfare of this state preserved by means of its citizens being compelled to contribute to a citizen and resident of a foreign land.

However much such a policy of spoilation may tend to enrich the remainder of the world, it contributes nothing to the betterment of our own land. To the contrary, it injures the very ones—our own citizens—for the protection of whom the government exists. Wherefore the Act is lacking in the two requirements essential to its validity, to-wit: the sub-

ject-matter does not benefit but burdens the citizenry of California, and the means used are arbitrary, unreasonable and unjust. We are thus brought to the conclusion reached in *Mugler v. Kansas*, 123, U. S. 661, 31 L. Ed. p. 210, where it was said:

> "If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the court to so adjudge, and thereby give effect to the Constitution."

The issue reduces itself to just this: An act of the legislature finds its sole justification in the police power of the state, in that the enforcement of its provisions tend to advance some phase of the public welfare of that state. When its provisions are sought to be extended beyond the state into other lands, the very reasons which justified it in the former case condemn it in the latter. And so this case, as it is in most cases, may be decided upon the force of one of those salutary maxims of jurisprudence, to-wit:

> "*When the reason for a rule ceases, so should the rule itself cease.*"
>
> (Calif. Civ. Code, Sec. 3509.)

III.

THE JUSTIFICATION FOR A POLICE REGULATION MUST COME FROM WITHIN, AND NOT FROM WITHOUT THE STATE.

To further amplify the discussion, it is to be observed that no legislation, dependent for its validity

under the police power, can endure under the constitution, when its sole justification is founded upon conditions existing in a foreign land.

Those conditions are the prevention of pauperism in foreign lands and of public charges upon foreign governments. But what the conditions are is unimportant. The significant point is that they are conditions prevailing in a foreign land and not in our own, and with which we have no governmental concern, and for the prevention of which, there, constitutional rights cannot be abrogated here.

It would seem unnecessary in this day and age to mark back to those principles, long ago declared by this court, which describe the limitations of all legislation and governmental action. Nevertheless, the same principles were disregarded by the court below.

We are here dealing with the power of a sovereign state to enact a law. The first limitation which suggests itself is a physical one,—the territorial boundary of the state. Beyond that its sovereignty ceases in favor of the dominion of some other foreign power. There, nationalism is divided. The social compact in the one does not contemplate obedience to the internal regulations of the other, and this must be true whether the regulation be beneficial or deleterious to its interest. Each is a whole within itself. Any external extension of its authority into the domain of another is contrary to the nature of government and if accompanied with violence, is an act of war. And so it was that Chief

Justice Marshall wrote in *The Antelope*, 10 Wheat. (U. S.) 66, 122, 6 L. Ed. 268:

> "No principle of general law is more universally acknowledged than the perfect equality of nations."

And as was said in *Polydore v. Prince*, 19 Fed. Cas. No. 11, 257, 1 Ware 402, 410:

> "It is among the first maxims of the *jus gentium* that the legislative power of every nation is confined to its own territorial limits. This is a principle which results directly and necessarily from the independence of nations. Whatever may be the nature of the law, whether it relates purely to persons and their civil qualities, or to things, it can, *proprio vigore*, have no force within the territorial limits of another nation."

And in *Roche v. Washington*, 19 Ind. 53, 59, 81 Am. Dec. 376:

> "The laws of a nation are operative only within the limits of the territory over which the jurisdiction of the nation extends."

The operation of a law cannot of necessity be more co-extensive than the jurisdiction of the sovereign power from whence it emanates.

Hilton v. Guyot, 159 U. S. 113, 16 S. Ct. 139, 40 L. Ed. 95;

Augusta Bank v. Earle, 13 Pet. (U. S.) 519, 10 L. Ed. 274;

In Re Waite, 99 N. Y. 433, 2 N. E. 440.

Edgerly v. Bush, 81 N. Y. 199;

McDonald v. Mallory, 77 N. Y. 546, 33 Am. Rep. 664;

Dyke v. Erie R. Co., 45 N. Y. 113, 6 Am. Rep. 43.

In 36 Cyc. pp. 829-830, the principle is thus stated:

"In general the jurisdiction of a state is co-extensive with its sovereignty, and subject to the restrictions imposed by the federal constitution, the sovereignty of each state extends throughout its entire territory and to all persons and property within its territorial limits. Conversely, no state can exercise jurisdiction by judicial process or otherwise over persons or property outside of its territorial limits unless such power has been acquired by compact with other states, except in case of a vessel upon the high seas, where the state to which the vessel belongs has jurisdiction in respect to matters not committed exclusively to the federal government."

Sanders v. St. Louis, etc. Anchor Line, 97 Mo. 26, 10 S. W. 595; 3 L. R. A. 390;

State v. Metcalf, 65 Mo. App. 681;

N. J. Cent. R. Co. v. Jersey City, 70 N. J. L. 81; 56 A. 239; 61 A. 1118; 52 L. Ed. 896;

Providence Bank v. Billings, 4 Pet. (U. S.) 514, 7 L. Ed. 939;

McCullough v. Maryland, 4 Wheat. (U. S.) 316, 4 L. Ed. 579;

Meyler v. Wedding, 107 Ky. 310, 53 S. W. 809; 92 A. S. R. 347;

People v. N. J. Cent. R. Co., 42 N. Y. 283;

Sheetz v. Sheetz, 6 Lanc. L. Rev. (Pa.) 97;

Platt v. Oliver, 19 Fed. Cas. No. 11, 115, 2 McLean 267.

This is but the natural limitation of all sovereign powers and is natural because in addition to being

composed of people, governments are also possessed of and rule over property, and it is in the exercise of its functions for their welfare that laws are enacted pertaining to the conduct of its own citizens and the management of their property pursuant to the great social compact between all of them. But that compact does not bind or concern persons not parties to it.

Sovereign authority and power itself being coextensive only with the territory of the state, any attribute of that sovereignty must be likewise limited, else the part would be greater than the whole, and the stream rise higher than its source. The police power, being "the power to govern," (*Clausen Case, supra*) is an attribute of the particular sovereignty, and accordingly limited to the territory thereof.

Depriving or curtailing one of his liberty, destroying property or imposing limitations upon its use, and a great many other things, done under this power being justified because of "an overruling public necessity" it is at once suggested that the "public necessity", whatever it may be, arises from, and for the power to be expended, it must arise from, the internal affairs of the state itself and not the international disorders of foreign governments. Again, the public health of a city may require that laundries or slaughterhouses be confined to restricted districts; the public morals of the people of a state that certain acts be refrained from; the safety of the public that inflammable articles be

transported in a certain kind of container, and police regulations requiring such have been justified on the theory of an "overruling public necessity" or that one must so use his own property so as not to interfere with others in the enjoyment of what is theirs. So it comes to this, that being an attribute of sovereignty and

> "nothing more or less than the powers of government inherent in every sovereignty * * * that is to say—the power to govern men and things."
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> *In re License Cases*, 5 How. (U. S.) 504, 583, 12 L. Ed. 256;
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> *Munn v. Illinois*, 94 U. S. 113, 24 L. Ed. 77;
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> *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. Ed. 23;
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> *Barbier v. Connelly*, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923;
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> *Chicago etc. R. Co. v. Arkansas*, 219 U. S. 453, 31 S. Ct. 275, 55 L. Ed. 290;
>
> *Martin v. Hunter*, 1 Wheat. (U. S.) 304, 326, 4 L. Ed. 97;

It

> "extends to the protection of the lives, health, comfort and quist of all persons, and the protection of all property *within the state*." (12 Corp. Jur. p. 909, and cases there cited.)

Reference may also be had to the following:

> *Dent v. West Virginia*, 129 U. S. 114, 32 L. Ed. 623;
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> *Minneapolis etc. R. Co. v. Beckwith*, 129 U. S. 26, 32. L. Ed. 585;

Powell v. Pennsylvania, 127 U. S. 678,, 32 L. Ed. 253;
Mugler v. Kansas, 123 U. S. 623, 31 L. Ed. 205;
Soon Hing v. Crowley, 113 U. S. 703, 28 L. Ed. 1145;
Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923;
License Cases, 46 U. S. 5, 12, L. Ed. 256;
Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394;
Stoll v. Pac. Const. S.S. Co., 205 Fed. 169 (Upholding Washington Workmen's Comp. Act);
In Re Junqua, 10 Cal. App. 602;
2 *Kent Com.*, 340;
Com. v. Alger, 7 Cush. 84.

It clearly appearing that police regulations have no extra-territorial effect, it is equally clear that if their sole justification be because of some extra-territorial condition, such is tantamount to no justification at all. For instance, the narrow streets found in the cities of certain European countries might justify the enactment of a penal statute prohibiting more than one-way traffic there. Could the necessities arising from that condition there possibly furnish the sole justification for a similar enactment here, where opposite conditions prevail? The exercise of the police power depends upon local conditions which demand or require certain regulatory or remedial legislation. The remedy must be ap-

propriate, "and be reasonably calculated to avoid such evil."

> *Yee Gee v. San Francisco*, 235 Fed. 757, 764; *Mayor, etc. of New York v. Miln*, 11 Peters 102, 133.

Were the states permitted to legislate on subjects looking entirely to the alleviation of some condition beyond their borders, the door is opened wide to endless confusion and complexities. Indeed, it is conceivable that such digressions might endanger the safety and welfare of the whole Union.

In this particular case the tendency is evidenced to compel the citizens of this commonwealth to shoulder burdens naturally and properly falling upon foreign powers. Were the liability to compensate persons residing in a foreign land dependent upon the fault or wrong of our own citizens, the law would not seem so ignominious and so abhorrent to our institutions and to the institutions of every free and independent government. But such is not the case. The citizen of this state has done no wrong. No fault is attributable to him, morally or legally. He has created an honest employment of which the employee has availed himself. The employee is killed, possibly because of his own gross carelessness; possibly through an avoidable accident.

The liability is created in favor of a relative of his domiciled in and a citizen of a foreign land, and whose allegiance belongs to a foreign flag. As between the two, in time of war, the one would be o

the side of America; the other, on the side of Mexico. In times of peace, the taxes levied upon the one would aid in the maintenance of this state and nation; of the other, the government of a foreign land. The life of the one is a component part of the whole life of America; the life of the other, a part of the life of a foreign power. "The chain is no stronger than its weakest link." Therefore, it is to make the Union strong that the parts are protected, and to this end laws are enacted and courts established that the proper ends of government may be subserved. In this case a burden is shifted from another nation and unjustly thrown upon the shoulders of our own citizens, and to the extent of the weight of the load is the strength of the entire chain weakened.

In thus placing a shield in the hands of foreign powers and drawing a sword upon her own, the legislature of the State of California has stepped beyond the purview of constitutional powers and attempted what is contrary to the purpose of all government.

Decisions of courts are not necessary to establish the proposition that the police power, or other governmental power cannot be exercised for the purpose of working an injustice, a hardship or loading a burden upon the citizens of this government for the sole benefit of foreign powers and the citizens thereof. We are not so agitated as to suggest that this particular law endangers the safety of the entire Union or state. However, it is unnecessary to go that far. It sufficiently appears that an injus-

tice is done; a hardship is worked and a burden placed upon our own citizens which does not subserve the public welfare of this state or nation, and whose only "practical operation and effect" is to benefit those of another land.

To contend that this nation or this state has such a power is to ignore the reason which banded the tribes; created the state and united the nation. The primal law of self-preservation defeats such a contention and places the national welfare above all else. The Union exists because there is no such power. The Constitution was written to preserve the Union, and is dependent for its life thereupon. The one is the counter part of the other. Therefore, there is not to be found in the recesses of the Constitution the means of its own destruction. Neither is Congress or the several states permitted the use of such power.

Since it is contrary to the principles upon which a constitutional government is founded for the government itself to provide the means for its own destruction, a law which weakens a part of the Union is a nullity for the same reason. Because the strength of the Union is dependent upon the strength of all its component parts, the Congress and the several states not only are without power, but are prohibited, perforce the national compact, from surrendering or bartering away the means of furthering the general welfare and preserving and protecting the rights and property of their own citizens. These principles have long been recog-

nized by this court, and we refer particularly to the language in *Pennsylvania Hospital v. Philadelphia*, 245 U. S. 20; 62 L. Ed. 124, 127, where Mr. Chief Justice White said:

> "There can be now, in view of the many decisions of this court on the subject, no room for challenging the general proposition that the states cannot, by virtue of the contract clause, be held to have divested themselves by contract of the right to exert their governmental authority in matters which, from their very nature, so concern that authority that to restrain its exercise by contract would be a renunciation of power to legislate for the preservation of society or to secure the performance of essential governmental duties."

The same principle was applied in *Laurel Hill Cemetery v. San Francisco*, 152 Cal. 464; 14 A. & E. Ann. Cas. 1080, 1081:

> "This power cannot be bargained or contracted away, and all rights and property are held subject to it." (Citing decisions from this court.)

The language of the court is plain. The fundamental reason therefor we have endeavored to state. Since a state cannot barter away the means of preserving the welfare of its own citizens, conversely is it true that the power is equally lacking to expressly legislate against the welfare of its own citizens.

The California Workmen's Compensation, Insurance and Safety Act of 1917, would do this very thing. We submit, therefore, that in so far as it

purports to create a liability in favor of non-resident, alien dependents against citizens of this state who are guilty of no fault or wrong-doing, it is to that extent, unconstitutional and void.

IV.

ANALOGY IN LIMITATION UPON TAXING POWER OF STATE.

There is a marked similarity, in practical operation and effect, between the payment of compensation by an employer to industrial casualties for the benefit of the state and the payment of taxes for the support of the government. The similarity also exists between the source of the sovereign authority which enforces the payment of the one and the other. Indeed, Workmen's Compensation Acts have often been said to create a tax on industry, which, in turn, is shifted to the consuming public.

This similarity existing, an inquiry into the constitutional limitations upon the taxing power is pertinent. Without lengthy citation of authority, suffice it to point out here that there are three general constitutional limitations upon the taxing power of the state, viz:

FIRST: The power is limited to persons and property within and subject to the jurisdiction of the state.

State Tax on Foreign-Held Bonds, 15 Wall. (U. S.) 300; 21 L. Ed. 179;

Indiana v. Pullman Palace Car Co., 16 Fed. 193;

New Jersey Cent. R. Co. v. Jersey City, 70 N. J. L. 81, 56 A 239;

People v. Reardon, 184 N. Y. 431; 77 N. E. 970; 112 Am. St. Rep. 628; 8 L. R. A. N. S. 314.

SECOND: The tax cannot be imposed for other than a public purpose.

Cole v. La Grange, 113 U. S. 1; 5 S. Ct. 416; 28 L. Ed. 896;

Citizens Sav. Asso. v. Topeka, 20 Wall. 655, 663; 22 L. Ed. 455;

Dodge v. Mission Tp., 107 Fed. 827; 46 C. C. A. 661; 54 L. R. A. 242;

Sutherland-Innes Co. v. Evart, 86 Fed. 597; 30 C. C. A. 305;

People v. Parks, 58 Cal. 624.

The determination by the legislature that the purpose of the tax is legitimate is not binding upon the courts. Its declaration to the contrary does not convert a private use into a public one. When the purpose of the tax is not a public one, no stress of circumstances affecting its expediency and importance or desirableness can bring it within the scope of the legislative power. In such a case, the court does not need a constitutional provision declaring that taxation shall be "for public purposes only" as authority for annulling a tax levied in contravention of that principle, since the state is without authority to tax for any other purpose.

Citizen's Sav. Asso. v. Topeka, supra;

Dodge v. Mission Tp., supra;

Deal v. Mississippi County, 107 Miss. 464; 18 S. W. 24; 14 L. R. A. 622;

Matter of Jensen, 44 N. Y. App. Div. 509; 60 N. Y. Supp. 933;

Lowell v. Boston, 111 Mass. 454; 15 Am. Rep. 39.

And the public interest in and the public benefit must be direct and immediate from the purpose and not merely collateral, remote or consequential.

Deal v. Mississippi County, supra;

Weisner v. Douglas, 64 N. Y. 91; 21 Am. Rep. 586.

Consequently, the payment of a mere gratuity by the state being based upon no legal, equitable or moral obligation, money therefor cannot be obtained by taxation.

Matter of Jensen, 44 N. Y. App. Div. 509; 60 N. Y. Supp. 933;

Mead v. Acton, 139 Mass. 341; 1 N. E. 413.

THIRD: The constitutional requirement that taxes shall be equal and uniform throughout the state prohibits the imposition of a tax on one municipality or part of the state for the purpose of benefiting or raising money for another.

People v. Townsend, 56 Cal. 633;

Hutchinson v. Ozark Land Co., 57 Ark. 554; 22 S. W. 173; 38 Am. St. Rep. 258;

Prince George's County v. Laurel, 70 Md. 443; 17 A. 388; 3 L. R. A. 528;

Manistee Lbr. Co. v. Springfield Tp., 92 Mich. 277; 52 N. W. 468;

State v. Fuller, 39 N. J. L. 576;
Cleveland v. Heisley, 41 Ohio St. 670;
Mills County v. Brown County, 85 Tex. 391; 20 S. W. 81;
All Hands v. People, 82 Ill. 234;
McClelland v. State, 138 Ind. 321; 37 N. E. 1089;
Murray v. Lehman, 61 Miss. 283;
Wasson v. Wayne County, 39 Ohio St. 622; 32 N. E. 472; 17 L. R. A. 795.

With these fundamentals in mind the analogy may be drawn closer by reference to a supposed case. Assume that the state undertook to levy a tax upon all employers, the proceeds thereof to be paid to persons residing in foreign lands, and who were dependent upon employees killed in industry in this state. The tax would be illegal, because not levied for a public benefit in this state and because money to be raised by taxation must be converted into benefits where it is collected. In addition to the authorities cited, we quote from *Canfield v. County of Los Angeles*, 157 Cal. 617, 622:

> "Citizens are taxed for the support of the government that protects them and their property."

And from *Hughes v. Ewing*, 93 Cal. 414, 419:

> "The theory upon which the power of taxation is authorized is the benefit to the tax-payer. It would be manifestly unjust to compel a contribution by tax to an object or for the benefit of a class in which the tax-payer is directly excluded from participating."

The law being that a tax could not be collected from employers or industry for the compensation of non-resident, alien dependents, neither can an employer be compelled to compensate such dependents by a direct payment of money. The fact that an employer may shift this burden upon the consuming public strengthens rather than weakens the argument, since the analogy with the assumed case of taxation is thereby drawn closer, and since the state has no authority to place this burden upon her people for such purpose.

V.

THE CASE OF WESTERN METAL SUPPLY CO. v. INDUSTRIAL ACCIDENT COMMISSION, 172 Cal. 407.

Aside from these two cases, the only other case in California where the precise question here presented was considered was *Western Metal Supply Co. v. Ind. Acc. Comm.*, 172 Cal. 407. That was one of the first cases where the compensation act was considered. Since the dependent was not an alien, nonresident, the language of the court might be considered *obiter dictum*. Opinions were written by Justices Sloss, Shaw, Henshaw, and Chief Justice Angellotti. Justice Sloss made some comment on the constitutional issue here presented. However, none of the other justices in their opinions concurred in his views, while Justice Henshaw, whose opinion was concurred in by Justices Lorigan and Melvin, spoke very forcibly in favor of the position

we have taken here. So cogent are his remarks to the present issue that we quote from his opinion at page 429:

> "I dissent from the view which justifies the giving of the property of a citizen of this country to nonresident aliens who are not even within the jurisdiction of the state. By no conceivable stretch of the imagination of which I am capable can I perceive that the support of such nonresident aliens is any part of the duty of the state, or that provision for such support comes within any possible legitimate purview of the police power. I must confess to a lack of nimbleness of mind which makes it impossible for me to follow the rapidly shifting grounds upon which one or another of the terms of this law are upheld. I have heretofore expressed some of my difficulties in this regard. Thus when under the provisions of the constitution, which the constitution itself declares are mandatory, it is declared that the legislature shall impose a liability upon all employers, I have been unable to see how justification could be found for the act of the legislature in exempting favored classes of employers. The answer is made by this court that these exempted employers of labor are not favored by unfavored classes, because this law is really a benefit to the employer. But why then the legislature should be allowed to discriminate against certain employees remains an unanswered query. When it is asked, if the law be for the benefit of the employee, by what right are the employees of these exempted classes denied their right, we are brought back to our starting-point by the declaration that the legislature exempted them because it believed that there was less danger or risk in their employments. When the farmers' men working harvesters and threshing-machines are deprived of the benefit of this law, this court gravely states

that the reason, doubtless, was that the legislature did not think that their employment was as dangerous as those of dry-goods clerks and telephone girls. Whenever a feature of the act does not appear to be for the benefit of the employer it is upheld as being a benefit of the employee. When it is not a benefit to the employee it is justified as being a benefit to the employer. And whenever it cuts too deeply into the rights of both employer and employee, then it is said to be justified by the state's interest in the general subject. And this last is the argument here advanced in support of the donation by the state of the property of its citizens to alien non-residents."

VI.

THE INCONSISTENT POSITIONS OF THE INDUSTRIAL ACCIDENT COMMISSION.

The defendant in error, Industrial Accident Commission, took the position below that California was fully within her constitutional authority in compelling the compensation of non-resident, alien dependents. It is interesting to note the variable effect which the peculiar exigencies of cases have on the opinion of the same litigant. For instance in *Quong Ham Wah Co. v. Industrial Accident Commission*, (Oct. Term 1920, No. 638) the Commission filed a brief with this court in which it expounded quite fully the views it then held on the states' police power. On page 50 of that brief it said:

"If the power of a state to give extraterritorial force to its workmen's compensation act is based upon its police power to protect its own

citizens and welfare, then such power is also limited by the police power and cannot be extended beyond it, to cases where its citizens and welfare are in no way affected. The protection of citizens of New York against injuries sustained by them while employed in Alaska, cannot be referred to the police power of California. The injured New Yorker will in all probability return to his own state after the injury, or will leave widow or orphans in his own state. Certainly there is no presumption that residents of New York or any other state, injured in Alaska, will affect the interests of California. The police power, therefore, would not justify the extension of section 58 of the California law, to the protection of nonresidents injured abroad."

Again on pages 56-57 it is observed:

"The object of the California Workmen's Compensation Act is to compel California industry to bear its fair share of the burden thrown upon the State of California by the killing and wounding of workmen in industry. (*Western Indemnity Co. v. Pillsbury, et al.*, 170 Cal. 686; 151 Pac. 398.) To fully attain this object it is necessary that California industry remain subject to the same burden where California employees in the course of its operation are injured while temporarily outside the state. It is no part of this object that California should protect Nevada or its citizens against the killed and injured of Nevada industry outside the state becoming a burden upon Nevada. It would, in fact, be an invasion of the sovereignty of Nevada and outside the police power of California for California to officiously intermeddle in the public affairs of Nevada in this manner.

In the last analysis, the reasonableness of section 58 turns upon the difference between

intraterritorial and extraterritorial legislation. The resident of any state of the United States *injured in California* is entitled to the benefits of the California compensation act upon the same terms as residents of California, under article IV, section 2, of the Federal Constitution. But for injuries occurring outside of California the California Workmen's Compensation Act should apply only to the protection of California residents or to the advancement of California welfare, and not further. As to injuries occurring in the Territory of Alaska, every state can protect its own residents working in Alaska, and Alaska may also legislate upon the subject. It is not necessary or reasonable for Oregon to legislate concerning the employment of Californians in Alaska, or for California to legislate concerning the employment of Oregonians in Alaska."

Precisely why these principles would not vitiate the Act as to non-resident, alien dependents, we are unable to see.

VII.

MISCELLANEOUS CONTENTIONS.

In addition to seeking justification for the legislation on the ground that no one has a vested interest in a rule of the common-law other contentions may be advanced in support of the Act and with equal ease proven fallacious.

(a) An insurance measure.

It is anticipated that the argument may be made that this is but an insurance measure, and as insurance money goes to the beneficiary regardless of

his residence, there should be no distinction between this and other kinds of insurance. (See *In Re Derinza*, (Mass.) 118 N. E. 942, 945, for this species of argument.) This Act does provide for insurance and requires the employer either to insure with the state, certain carriers or by setting aside sufficient funds to secure the payment of the compensation provided for. The answer to this contention is, of course, plain. The contention amounts to nothing less than a begging of the question, and assumes fallaciously that the state can constitutionally require an employer to insure for the benefit of non-resident, alien dependents. If an employer can not be compelled to pay directly to such dependents, he cannot be compelled to expend money that insurance carriers will do so. The incident follows the principle. If he is not obligated in the first case he cannot be in the latter.

Nor could the *Derinza Case, supra*, be cited as authority here, since, the Massachusetts Act is elective, and hence, its provisions requiring the employer to insure, are properly regarded as a part of contract of employment,—an assumption which cannot be indulged in this state, as has been seen.

The insurance feature of a compulsory act neither adds to or detracts from the constitutional justification therefor.

(b) Fallacious analogy with case of injured alien employee.

The contention might be urged that the state is as much empowered to compel compensation of a

non-resident, alien dependent as of an injured, alien employee, who may subsequently remove from the state. The argument would be, we suppose, that assuming his right to compensation to be unquestionable while domiciled here, yet he could not become a public charge upon this state if he moved to a foreign land. The cases are not analogous. In the supposed case the employee did reside here when injured and the justification for the Act in his case is found in the fact that the state was interested in preventing his becoming a public charge then. Again, as a resident of this state he was entitled to the equal protection of its laws to the same extent as other residents. (U. S. Const. Act. IV, Sec. 2.) Further, though the legislature was empowered to alter rules of the common law by creating new rights and liabilities, "in the public interest", it could not, in a constitutional view, wipe out all common-law remedies of employee without providing reasonable substitute therefor. (See Comment in *New York Cent. R. Co. v. White*, 243 U. S. 201; 61 L. Ed. 674.) The survivor could offer no such complaint. The common-law rule of "*actio personalis*" vested no right of action in the survivor for wrongful death, the right being purely statutory and originating in Lord Campbell's Act. Finally, compelling the compensation of injured employees is justifiable for other reasons than to prevent their becoming public charges, as has been seen. But this is the only justification in case of dependents. We repeat, the cases are not parallel.

(c) The public foots the bills.

After all arguments fail, the suggestion is generally made that the employer does not have to bear this additional burden ultimately, since he may shift it to the consuming public as part of the cost of production. However much this balm may temporarily appease an irate employer, it has no place in a legal argument and when reduced to its elements brings him who advances it in conflict with his own position. By a parity of reasoning a thief might justify his larceny upon the ground that compensation to the owner would permit him to acquire another article as good as the stolen one. But the real absurdity is in suggesting that the state may be relieved from supporting the paupers of industry, because of the act and then to assert that the public and not the employer will bear this burden. Just where the distinction lies between the public has never been made quite clear by the brilliant inventors of this specious argument. The employer should pay because the state should not and the public should pay because the employer does not. (See McKenna, J., in *Arizona Copper Co. v. Hammer*, 250 U. S. 439-440; 63 L. Ed. 1074-1075.)

But assume this silly contention to be sound, the problem is not solved. The question still remains: What right has the state to burden its consumers with extra charges for the sole benefit of non-resident, alien dependents?

(d) Effect upon labor.

It has been argued that this policy of spoliation was justifiable in the interests of industrial peace. The fear has been expressed that employers would favor the employment of those whose dependents resided in foreign countries in preference to those residing there, were the latter entitled to compensation and the former not. Such a policy should please the State of California exceedingly well, since all source of worry because of industrial pauperism would entirely disappear, and the ends and objects of the legislation achieved.

Nor do we understand that the state may divest a faultless employer of his property, simply to quell labor disputes. If the right of free contract is of any significance at all, it certainly entitles an employer to choose his employees how, when, where and why he pleases. Because the constitution permits the placing of this burden on an employer in favor of resident dependents affords no reason for adding another burden in favor of non-resident dependents just simply to correct a possible evil created by the first burden. Though the fear is groundless, it might be observed that to avoid compensating dependents, an employer could also employ none other than persons without dependents at all. No law prohibits this, and if there is cause for fear in the one case, the provocation for industrial strife is certainly greater in the latter. It would seem clear that the legislature did not con-

template preventing discrimination in the matter of employment, but could not do so in this manner any way under the constitution.

Finally, no particular advantage could accrue to the employer in discriminating against American laborers. If non-resident, alien dependents were not entitled to compensation under this Act, an action would lie for wrongful death against the employer in favor of the dependent.

(c) Prevention of accidents.

This Act contains very strict provisions requiring the maintenance of safe places of employment and the utilization of safety devices. (Stats. 1917, pp. 861-868.) It could not be fairly contended that non-resident, alien dependents should be compensated to prevent accidents in the industry of the employer. The compensation features of the Act are not related to the prevention of accidents, nor do they have that end in view. The compensation allowed relates to the amelioration of a condition affecting society which accrues after the accident, not before. The entire scheme is developed upon that theory. The requirements as to safety devices, the remedies and penalties afforded for their violation are designed to prevent accidents. Moreover, the contention assumes that an employer would be careless simply in hopes that an alien employee would die, whereupon his foreign dependents could not recover. But if he lived the employer would have to compensate him. It is unreasonable to

think that an employer would be careless for any such reason, thus exposing himself to the penalties of the Act and to liability to other employees or resident dependents who could as easily suffer by his negligence in operating his works.

This remote possibility would be an unreasonable exercise of the police power for the prevention of accidents.

(f) Equal protection of the laws.

It occurs to us that respondents may reply that dependents in other states of the Union are entitled to compensation under the Act, and they may not become public charges on this state. While there is more likelihood of their so becoming public charges than non-resident, alien dependents, still there is a more complete answer to the contention. They are entitled to compensation perforce Art. IV, Sec. 2 of the Federal Constitution which refers, however, only to *citizens*, and not to non-resident, alien dependents.

Ward v. Maryland, 12 Wall. 418;
Slaughter House Cases, 16 Wall. 36;
Blake v. McClung, 172 U. S. 165.

Since the right is communicated to them by the supreme law of the land, their case is not parallel to that of the non-resident, alien dependent.

There is no legal reason which justifies the Act in the respects mentioned under the Constitution.

Summary and Conclusion.

We have now presented, at too great length perhaps, the reasons which to us necessitate the reversal of the order below. Though the amounts involved in these two cases are not large, it seems to us that the principles presented are far-reaching and of great consequence, and their declaration and application must serve as a precedent for time to come. Shall the judgment below stand, then the decision here will not only uphold the authority of the state, under the police power, to compel the compensation of non-resident, alien dependents, but of necessity will the doctrine be established that no longer is it necessary for the several states to look to their own conditions and the circumstances of their own citizens as a basis for the exercise of the police power, but may disregard or ignore those conditions and circumstances and legislate away the rights of their own people for other alleged causes or purposes to ameliorate conditions abroad. The further authority will also be recognized to legislate against the interests of their own entirely in favor of citizens of foreign lands, since the power to do the latter is but a natural adjunct to the former. And the principle thus being entrenched in our institutions that the states may legislate against their own citizens and interests, the instrumentality of self-destruction is complete, and state, and finally national dissolution is bound to follow. However astounding this may seem at first blush, and however unpleasant these results are to contemplate,

such, nevertheless is the case, and the conclusion reached is irresistible.

The trend of the events of the day, examined in the light of the experinece of the past, point to but one safe course for this government, or of any of the states, in their relations with citizens of foreign powers, and one course alone, and that,—"America first".

It is respectfully submitted that the judgment below should be reversed.

Dated, Madera,
January 27, 1923.

H. E. Barbour,
William C. Ring,
Attorneys for Petitioner in Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 235.

MADERA SUGAR PINE COMPANY, a corporation,
Plaintiff in Error,
vs.
INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and GERONIMA VENEGAS, by Jos. Barcroft, her attorney-in-fact,
Defendants in Error.

No. 296.

MADERA SUGAR PINE COMPANY, a corporation,
Plaintiff in Error,
vs.
INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, AURORA ARROYO, RAYMUNDA ARROYO, and GUADALUPE ARROYO, by their Guardian ad Litem, Rafael Arroyo,
Defendants in Error.

BRIEF OF DEFENDANTS IN ERROR.

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CALIFORNIA STATE PRINTING OFFICE

TABLE OF CONTENTS.

	Page
I. CONSOLIDATION OF CASES	1
II. STATEMENT OF FACTS	2
III. THE GERMANE FEATURES OF THE CALIFORNIA STATUTE	2
IV. GENERAL RIGHT OF ALIEN TO PURSUE STATUTORY REMEDY FOR DEATH	4
V. SUMMARY OF CONTENTIONS	7
VI. ARGUMENT	8
1. The Workmen's Compensation, Insurance and Safety Act of California, as interpreted by the highest court of that state, places citizen and alien employees in California upon a basis of equality, with respect to their rights to compensation	8
2. The states have power to place aliens upon a basis of equality with citizens, with respect to rights growing out of injuries occurring in the course of their employments	11
(a) The police powers inherent within a state do not prevent a state from placing aliens upon equal footing with residents with respect to civil rights, including those at issue in the cases at bar	11
(b) The right of a state to treat aliens upon a basis of equality with citizens is sustained by the "equal protection of the laws" clause of the Fourteenth Amendment of the Federal Constitution	24
(c) Such right is sustained by the fact that the states, in some cases, may be compelled by treaties between the United States and foreign nations to confer such equality of rights	28
3. The right of a state to confer equality of rights upon non-resident aliens with respect to death benefits under workmen's compensation acts, is sustained by analogy by the established right of the states to confer upon non-resident aliens rights of acquisition and inheritance of real and personal property of decedents dying in such states	30
VII. CONCLUSION	33

CASES CITED.

Page

Alfson vs. Bush Co., Ltd., 182 N. Y. 393, 108 Am. St. Rep. 815 5

Anastasakas vs. International Contract Co., 51 Wash. 119, 98 Pac. 93 5

Arizona Copper Co. vs. Hammer, 250 U. S. 400 24

Atchison, T. & S. F. Ry. Co. vs. Farjardo, 74 Kan. 314, 86 Pac. 301 ..... 5, 13

Blythe vs. Hinckley, 127 Cal. 431, 436; 59 Pac. 787; 180 U. S. 383; 21 Sup. Crt. Rep. 320 31

Carrasco vs. State, 67 Cal. 385, 7 Pac. 791 33

Cetofonte vs. Camden Coke Co., 78 N. J. L. 662 5

Derinza, et al., In re 229 Mass. 435, 118 N. E. 942 ..... 6, 20

Ferrara vs. Auric Min. Co., 43 Colo. 496, 95 Pac. 952 4

Gaska vs. American Car & Foundry Co., 127 Mo. App. 169 5

Greene vs. Caldwell, 170 Ky. 187, 186 S. W. 648 6

Hanrick vs. Patrick, 119 U. S. 156 32

Hawkins vs. Bleakley, 243 U. S. 210 24

Hutchinson Inv. Co. vs. Caldwell, 152 U. S. 65 32

In re Derinza, et al., 229 Mass. 435, 118 N. E. 942 ..... 6, 20

In re Salhaney, Ohio Ind. Com., No. 52881 6

Kalcic vs. Newport M. Co., 197 Mich. 364, 163 N. W. 962 6

Kaneko vs. Atchison, T. & S. F. Ry. Co., 164 Fed. 263 ..... 4, 30, 31

Kellyville Coal Co. vs. Petraytis, 195 Ill. 215, 217; 88 Am. St. Rep. 193 ..... 4, 13

Kryus vs. Crow's Nest P. Coal Co., Ltd., 107 L. T. 77, 6 B. W. C. C. 271 6

Laconte vs. City of Kenosha, 149 Wis. 343 5

Lykiardopoulo vs. New Orleans & C. R. L. & P. Co., 127 La. 309 5

Lyons vs. State, 67 Cal. 380, 7 Pac. 763 33

Mahoning Ore & Steel Co. vs. Blomfelt, 163 Fed. 827 5

Mascitelli vs. Union Carbide Co., 151 Mich. 693 5

McGovern vs. Philadelphia & Reading Ry., 235 U. S. 389 ..... 5, 12

Middleton vs. Texas Power and Light Co., 249 U. S. 152 24

Mountain Timber Co. vs. State of Washington, 243 U. S. 219, 37 Sup. Crt. Rep. 260 ..... 11, 12, 19

Mulhall vs. Fallon, 176 Mass. 266, 79 Am. St. Rep. 309, 57 N. E. 386 ..... 5, 13, 30

New York Central R. R. Co. vs. White, 243 U. S. 188, 37 Sup. Crt. Rep. 247 ..... 11, 12, 14

Poccardi vs. Ott, 86 W. Va. 565, 104 S. E. 54 6

Pocahontas Collieries Co. vs. Rukas, 104 Va. 278 5

Quong Ham Wah vs. I. A. C., 255 U. S. 445, 41 Sup. Crt. Rep. 373 (and cases there cited) 11

Romano vs. Capital City Brick & Pipe Co., 125 Iowa 591, 106 Am. St. Rep. 323 4

Page

Salhaney, Ohio Ind. Com., In re, No. 52881 6

Second Employers' Liability Cases, 223 U. S. 47, 53 24

Shee vs. Madera Sugar Pine Co., 2 Cal. I. A. C. 939 6

Skarpeletzos vs. Counes & Raptis Corp., 228 N. Y. 46, 126 N. E. 268 6

Southwestern Surety Ins. Co. vs. Vickstrom, ... Tex. Civ. App. ..., 262 S. W. 389 ..... 6, 26, 32

State ex rel vs. District Court, 131 Minn. 27 6

State vs. Rogers, 13 Cal. 159 33

State vs. Smith, 70 Cal. 153, 12 Pac. 121 31

Tomasi vs. Mazzotti & Butini, 2 Cal. I. A. C. 543 6

Trotta's Admr. vs. Johnson, 121 Ky. 827 5

Truax vs. Raich, 239 U. S. 33, 37 Sup. Crt. 7 26

United States vs. Fox, 94 U. S. 315 32

United States vs. Wong Kim Ark, 169 U. S. 649, 695; 18 Sup. Crt. 456 26

Victor Chemical Works vs. Industrial Board, 274 Ill. 11, 113 N. E. 173 6

Vietti vs. Geo. K. Mackie Fuel Co., 109 Kan. 179, 197 Pac. 881 ..... 6, 26, 29

Western Metal Supply Co. vs. Pillsbury, 172 Cal. 407, 416; 156 Pac. 491 ..... 6, 9

William Baird & Co., Ltd., vs. Savage, 43 Scot. L. R. 309, 13 L. T. 812 6

Wong Wing vs. U. S., 163 U. S. 228, 242; 16 Sup. Crt. 977 ... 26

Yick Wo vs. Hopkins, 118 U. S. 356, 6 Sup. Ct. 1064 25

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

No. 235.

MADERA SUGAR PINE COMPANY, a corporation,
Plaintiff in Error,
vs.
INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and GERONIMA VENEGAS, by Jos. Barcroft, her attorney-in-fact,
Defendants in Error.

No. 296.

MADERA SUGAR PINE COMPANY, a corporation,
Plaintiff in Error,
vs.
INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, AURORA ARROYO, RAYMUNDA ARROYO, and GUADALUPE ARROYO, by their Guardian ad litem, Rafael Arroyo,
Defendants in Error.

BRIEF OF DEFENDANTS IN ERROR.

I. CONSOLIDATION OF CASES.

The issues of law being identical in the two above entitled cases, the Plaintiff in error and

the Respondents in error have stipulated that the two cases may be submitted on the same briefs and determined by the court as if but one proceeding had been filed. (See Transcript of Record, case No. 235, page 25.) Therefore, we will briefly state the facts of the two cases and discuss the law of both in this brief.

II. STATEMENT OF FACTS.

The facts involved in the two cases (Nos. 235 and 296), are generally stated in the Transcripts of Record on file with this court. However, we desire the court to remember when considering these facts, that Ramon Lopez, the deceased employee mentioned in case No. 235, and Isaac Arroyo, the deceased employee mentioned in case No. 296, were residents of California at the time of their respective deaths and, though aliens, would have been entitled to receive compensation for their injuries had there been no fatal result.

III. THE GERMANE FEATURES OF THE CALIFORNIA STATUTE.

The "Workmen's Compensation, Insurance and Safety Act of 1917" of California contains no discrimination against non-residents or aliens except that found in section 14 (*a*). The section refers to dependency and provides that widows and children of men killed by

industrial accidents "shall be conclusively presumed to be wholly dependent upon a deceased employee; *provided, that these presumptions shall not apply in favor of aliens who are nonresidents of the United States at the time of the injury.*" This proviso is the only discrimination against aliens to be found in the act, and is not in issue in this case because the applicants before the Industrial Accident Commission were in one case the mother and in the other case the sisters of the deceased and are not within the classes mentioned in section 14 (*a*).

As opposed to this restriction, section 8 (*a*) of the act defines the term "employee" to mean: "Every person in the service of an employer * * * *including aliens*," etc. This section clearly shows the broad intent of the legislature to include all employees within the state, regardless of citizenship or alienage and to give them and their dependents compensation rights.

The court will thus observe that the California Statute has included alien employees by specific mention. The state, therefore, intended to give to aliens all of the rights to compensation, which, in the schedule of compensation benefits described in section 9 of the act, include death benefits to the dependents and partial dependents of an employee whose

injury results in death. The cases at bar, therefore, present only issues where non-resident aliens are placed on complete equality with resident citizens.

IV. GENERAL RIGHT OF ALIEN TO PURSUE STATUTORY REMEDY FOR DEATH.

In cases relating to liability for negligence the weight of opinion seems to be that a statute providing for such liability is for the benefit of the persons named therein regardless of whether they are residents or non-residents of the state in which the statute was enacted, or whether or not they are aliens. This view of the law has been accepted in Alabama, California, Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Louisiana, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Tennessee, Virginia, Washington and Wisconsin, and by the Federal Government.

Kaneko vs. *Atchison, Topeka and Santa Fe R. R. Co.*, 164 Fed. 263;

Ferrara vs. *Auric Min. Co.*, 43 Colo. 496, 95 Pac. 952;

Kellyville Coal Co. vs. *Petraytis*, 195 Ill. 215, 88 Am. St. Rep. 193;

Romano vs. *Capital City Brick & Pipe Co.*, 125 Iowa 591, 106 Am. St. Rep. 323;

Atchison, Topeka and Santa Fe R. R. Co. vs. *Farjardo*, 74 Kan. 314, 86 Pac. 301;
Trotta's Admr. vs. *Johnson*, 121 Ky. 827;
Lykiardopoulo vs. *New Orleans & C. R. L. & P. Co.*, 127 La. 309;
Mulhall vs. *Fallon*, 176 Mass. 266, 79 Am. St. Rep. 309;
Mascitelli vs. *Union Carbide Co.*, 151 Mich. 693;
Mahoning Ore and Steel Co. vs. *Blomfelt*, 163 Fed. 827;
Gaska vs. *American Car & Foundry Co.*, 127 Mo. App. 169;
Cefofonte vs. *Camden Coke Co.*, 78 N. J. L. 662;
Alfson vs. *Bush Co., Ltd.*, 182 N. Y. 393, 108 Am. St. Rep. 815;
Pocahontas Collieries Co. vs. *Rukas*, 104 Va. 278;
Anastasakas vs. *International Contract Co.*, 51 Wash. 119, 98 Pac. 93;
Lacoute vs. *City of Kenosha*, 149 Wis. 343;
McGovern vs. *Philadelphia & Reading Ry.*, 235 U. S. 389.

Likewise, in compensation cases the courts have shown a determination to allow compensation to alien dependents, regardless of the fact that there is no express provision of statute allowing such awards. Aliens are placed on the same footing as residents in Canada, England, California, Illinois, Kansas,

Kentucky, Massachusetts, Michigan, Minnesota, New York, Ohio, Texas and West Virginia.

Krgus vs. *Crow's Nest P. Coal Co., Ltd.*, 107 L. T. 77, 6 B. W. C. C. 271;

William Baird & Co., Ltd. vs. *Savage*, 43 Scot. L. R. 300, 13 L. T. 812;

Western Metal Supply Co. vs. *Pillsbury*, 172 Cal. 407, 416; 156 Pac. 491;

Tomasi vs. *Mazzotti & Butini*, 2 Cal. I. A. C. 543;

Shee vs. *Madera Sugar Pine Co.*, 2 Cal. I. A. C., 939;

Victor Chemical Works vs. *Industrial Board*, 274 Ill. 11, 113 N. E. 173;

Vietti vs. *Geo. K. Mackie Fuel Co.*, 109 Kan. 179, 197 Pac. 881;

Greene vs. *Caldwell*, 170 Ky. 157, 186 S. W. 648;

In re Derinza et al., 229 Mass. 435, 118 N. E. 942;

Kalcic vs. *Newport M. Co.*, 197 Mich. 364, 163 N. W. 962;

State ex rel. vs. *District Court*, 131 Minn. 27;

Skarpeletzos vs. *Counes & Raptis Corp.*, 228 N. Y. 46, 126 N. E. 268;

In re Salhaney, Ohio Ind. Com. No. 52881;

Southwestern Surety Ins. Co. vs. *Vickstrom*, ___ Tex. Civ. App. ___ 203 S. W. 389;

Poccardi vs. *Ott*, 86 W. Va. 565, 104 S. E. 54.

V. SUMMARY OF CONTENTIONS.

Plaintiff in error contends that the California Workmen's Compensation, Insurance and Safety Act of 1917 can not be interpreted as extending compensation rights to alien dependents who are not residents in California, or the United States, and that, if so interpreted, it is violative of the Fourteenth Amendment of the Constitution of the United States.

In contravention to the position assumed by Plaintiff in error, the Respondents in error assert their position to be as follows:

1. The Workmen's Compensation, Insurance and Safety Act of California, as interpreted by the highest court of that state, places citizen and alien employees in California upon a basis of equality, with respect to their rights to compensation.

2. The states have power to place aliens upon a basis of equality with citizens, with respect to rights growing out of injuries or deaths resulting from injuries occurring in the course of their employment, for the following reasons:

(*a*) The police powers inherent in a state do not prevent a state from placing aliens upon equal footing with residents with respect to civil rights, including those here in question.

(*b*) The right of a state to treat aliens upon a basis of equality with citizens is sustained by the "equal protection of the laws" clause of the Fourteenth Amendment of the Federal Constitution.

(*c*) Such right is sustained by the fact that the states, in some cases, may be compelled, by treaties between the United States and foreign countries, to confer such equality of rights.

3. The right of a state to confer equality of rights upon non-resident aliens, with respect to death benefits under workmen's compensation acts, is sustained by analogy by the established right of the states to confer upon non-resident aliens the rights of acquisition and inheritance of real and personal property of decedents dying in such states.

VI. ARGUMENT.

1. THE WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT OF CALIFORNIA, AS INTERPRETED BY THE HIGHEST COURT OF THAT STATE, PLACES CITIZEN AND ALIEN EMPLOYEES IN CALIFORNIA UPON A BASIS OF EQUALITY, WITH RESPECT TO THEIR RIGHTS TO COMPENSATION.

The "Workmen's Compensation, Insurance and Safety Act of 1913" was the original compulsory compensation law of California. Prior to that statute there had been an elective

compensation act. The "Act of 1913" was similar to the present act in the provisions at issue in this case. In *Western Metal Supply Co.* vs. *Pillsbury*, 172 Cal. 407, 156 Pac. 491, the constitutionality of the "Act of 1913" was attacked and it was alleged, among other grounds, that the statute permitted payments to non-resident and alien dependents and that no public purpose was to be served by requiring such payments and that such payments could be exacted only in violation of the Fourteenth Amendment of the Federal Constitution. In reply to this contention the Supreme Court of California said:

> "* * * The provision for such death benefits, like that for the payment of compensation to injured employees themselves, is a regulation of the conditions surrounding the employment of labor, and is to be justified upon similar grounds. It is argued that under the statute the employer may be required to make payments to alien and non-resident dependents, and that no public purpose cognizable by the legislature of this state is to be served by requiring payments to such aliens and non-residents. But this argument is based upon altogether too narrow a view of the constitutional limitations upon legislative action. If it may reasonably be thought that the best interests of the state, of the employers of labor and of those employed,

as well as of the public generally, are promoted by imposing upon the industry or the public the burden of industrial accident—and some such theory lies at the bottom of all workmen's compensation statutes (*Western Indemnity Co.* vs. *Pillsbury*, 170 Cal. 686, 151 Pac. 398)—*the residence and citizenship of the injured workman, or (if he shall have met death) of his dependents, are factors entirely foreign to the discussion.* The legislature has determined that the employment of labor in given pursuits entails upon the employer certain responsibilities toward the persons performing the labor and those dependent upon them. *There is no constitutional or rational ground for limiting the benefits of this legislative scheme to citizens or residents of this state.* If the employment was such as to fall within the state's lawmaking jurisdiction, the legislature certainly had the power to pass laws operating uniformly upon all persons affected by such employment." (Italics ours.)

The court of last resort of California having spoken directly on the issues presented in the cases at bar, and having affirmed the doctrine above stated by denying writs of review in the two cases now before this bar on error, this court is without authority to review or revise the construction affixed to the Workmen's Compensation, Insurance and Safety

Act of California, for the question is purely a state matter.

> *Quong Ham Wah* vs. *I. A. C.*, 255 U. S. 445, 41 Sup. Crt. Rep. 373 (and cases there cited).

Plaintiff in error practically concedes this in his brief (page 8), and his concession is, under the language used by this court in the decision in *Quong Ham Wah* vs. *I. A. C.* (*supra*), nothing short of a confession of the frivolous character of the federal question advanced.

2. THE STATES HAVE POWER TO PLACE ALIENS UPON A BASIS OF EQUALITY WITH CITIZENS, WITH RESPECT TO RIGHTS GROWING OUT OF INJURIES OCCURRING IN THE COURSE OF THEIR EMPLOYMENTS.

(a) The police powers inherent within a state do not prevent a state from placing aliens upon equal footing with residents with respect to civil rights, including those in issue in the cases at bar.

This statement is established by the decisions of this court in the cases of *Mountain Timber Co.* vs. *State of Washington*, 243 U. S. 219, 37 Sup. Crt. Rep. 260, and *New York Central R. R. Co.* vs. *White*, 243 U. S. 188, 37 Sup. Crt. Rep. 247.

Previous to the two decisions above mentioned (*Mountain Timber Co.* vs. *State of Washington* and *New York Central R. R. Co.* vs. *White*, this court, in considering the Railroad Employers' Liability Act of Congress of April 22, 1908, c. 149, held in the case of *McGovern* vs. *Philadelphia & Reading Ry. Co.* (235 U. S. 389), that, regardless of treaty provisions, the administrator of the estate of a resident alien, who during his lifetime had contributed to the support of his non-resident alien parents, could maintain an action for the benefit of such alien parents under the Federal Employers' Liability Act. The court "concluded that the weight of authorities in this country and England was that alienage is not a condition affecting a recovery under acts such as that involved in the case," and then proceeded to say:

> "The rights and remedies of the statute are the means of executing its policy. If this "puts burdens on our own citizens for the benefit of non-resident aliens," as said by the district court, quoting the Deni case, *supra*, it is a burden imposed for wrongdoing that has caused the destruction of life. It is to the prevention of this that the statute is directed. It is for the protection of that life that compensation for its destruction is given and to those who have relation to it. These may be wife, children or parents. The statute, indeed, distin-

guishes between them, *but what difference can it make where they may reside?* It is the fact of their relation to the life destroyed that is the circumstance to be considered, whether we consider the injury received by them or the influence of that relation upon the left destroyed." (Italics ours.)

See

Kellyville Coal Co. vs. *Petraytis*, 195 Ill. 217.

Atchison T. & S. F. R. R. Co. vs. *Fajardo*, 74 Kan. 314.

In *Mulhall* vs. *Fallon* (176 Mass. 266, 57 N. E. 386), the court of last resort of Massachusetts had this to say:

"Under the statute the action for death without conscious suffering takes the place of an action that would have been brought by the employee himself if the harm had been less, and by his representative if it had been equally great, but the death had been attended by pain. St. 1887, c. 270. In the latter case there would be no exception to the right of recovery if the next of kin were non-resident aliens. It would be strange to read an exception into general words when the wrong is so nearly identical, and when the different provisions are part of one scheme. *In all cases the statute has the interest of the employee in mind. It is on their account that an action is given to the widow or next of kin.* Whether the

action is to be brought by them or by the administrator, the sum to be recovered is to be assessed with reference to the degree of culpability of the employer or negligent person. *In other words, it is primarily a penalty for the protection of the life of a workman in this state.* We cannot think that workmen were intended to be less protected if their mothers happened to live abroad, or less protected against sudden than against lingering death. In view of the very large amount of foreign labor in this state, we cannot believe that so large an exception was silently left to be read in." (Italics ours.)

Plaintiff in error seeks to negative the force of the decisions last above cited on the ground that they involved negligence and that the granting of the right of an alien to recover was predicated on "wrong" and the payment of damages to a non-resident alien dependent can be sustained only upon the theory that such damages are assessed as punishment for the wrong. This contention is entirely upset by the decisions of this court in its decisions involving compulsory compensation acts.

In *New York Central Ry. Co.* vs. *White*, 243 U. S. 188, this court, speaking through Mr. Justice Pitney, said:

"* * * * The common law bases the employer's liability for injuries to the employee upon the ground of negligence;

but *negligence is merely the disregard of some duty imposed by law; and the nature and extent of the duty may be modified by legislation*, with corresponding change in the test of negligence. Indeed, *liability may be imposed for the consequences of a failure to comply with a statutory duty, irrespective of negligence in the ordinary sense;* safety appliance acts being a familiar instance. *St. Louis & Iron Mountain Ry.* vs. *Taylor*, 210 U. S. 281, 295 (52 L. Ed. 1061, 21 Am. Neg. Rep. 464); *Texas & Pacific Ry. Co.* vs. *Rigsby*, 241 U. S. 33, 39, 43 (60 L. Ed. 874)." (Italics ours.)

Applying the doctrines above enunciated, Justice Pitney then proceeds to discuss the New York Workmen's Compensation Law, and says:

"* * * The statute under consideration sets aside one body of rules only to establish another system in its place. If the employee is no longer able to recover as much as before in case of being injured through the employer's negligence, he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages. Instead of assuming the entire consequences of all ordinary risks of the occupation, he assumes the consequences in excess of the scheduled compensation, of risks ordinary

and extraordinary. On the other hand, if the employer is left without defense respecting the question of fault, he at the same time is assured that the recovery is limited, and that it goes directly to the relief of the designated beneficiary. And just as the employee's assumption of ordinary risks at common law presumably was taken into account in fixing the rate of wages, so the fixed responsibility of the employer, and the modified assumption of risk by the employee under the new system presumably will be reflected in the wage scale. The act evidently is intended as a just settlement of a difficult problem, affecting one of the most important of social relations, and it is to be judged in its entirety. We have said enough to demonstrate that, in such an adjustment, *the particular rules of the common law affecting the subject matter are not placed by the Fourteenth Amendment beyond the reach of the law-making power of the state.*"

* * * * * * *

"Much emphasis is laid upon the criticism that the act creates liability without fault. This is sufficiently answered by what has been said, but we may add that *liability without fault is not a novelty in the law.* The common-law liability of the carrier, of the innkeeper, of him who employed fire or other dangerous agency or harbored a mischievous animal, was not dependent altogether upon questions of fault or negligence. *Statutes imposing lia-*

bility without fault have been sustained. St. Louis & San Francisco Ry. vs. Mathews, 165 U. S. 1, 22 (41 L. Ed. 611); Chicago, R. I., etc., Ry. Co. vs. Zernecke, 183 U. S. 582, 586 (46 L. Ed. 339)."

* * * * * * *

"The provision for compulsory compensation, in the act under consideration, can not be deemed to be an arbitrary and unreasonable application of the principle, so as to amount to a deprivation of the employer's property without due process of law. The pecuniary loss resulting from the employee's death or disablement must fall somewhere. It results from something done in the course of an operation from which the employer expects to derive a profit. *In excluding the question of fault as a cause of the injury, the act in effect disregards the proximate cause and looks to one more remote—the primary cause, as it may be deemed—and that is, the employment itself.* For this, both parties are responsible, since they voluntarily engage in it as coadventurers, with personal injury to the employee as a probable and foreseen result. * * * *Viewing the entire matter, it can not be pronounced arbitrary and unreasonable for the state to impose* upon the employer the absolute duty of making a moderate and *definite compensation in money to every disabled employee, or in case of his death to those who were entitled to look to him for support, in lieu of the*

common-law liability confined in cases of negligence."

* * * * * * *

"* * * We recognize that the legislation under review does measurably limit the freedom of employer and employee to agree respecting the terms of employment, and that it can not be supported except on the ground that it is a reasonable exercise of the police power of the state. In our opinion it is fairly supportable upon that ground. And for this reason: The subject matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare. 'The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer.'" *Holden* vs. *Hardy*, 169 U. S. 366, 397 (42 L. L. Ed. 780).

* * * * * * *

"* * * *In our opinion, laws regulating the responsibility of employers for the injury or death of employees arising out of the employment bear so close a relation to the protection of the lives and safety of those concerned that they properly may be regarded as coming within the category of police regulations.*" *Sherlock* vs. *Alling*, 93 U. S. 99, 103 (23 L. Ed. 819); *Missouri*

Pacific Ry. Co. vs. *Castle*, 224 U. S. 541, 545 (56 L. Ed. 875). (Italics ours.)

In *Mountain Timber Co.* vs. *State of Washington* (243 U. S. 219, 37 Sup. Ct. Rep. 260) the compulsory compensation statute of the State of Washington was considered by this court, Mr. Justice Pitney, again speaking for the court, had this to say in regard to the contention that that statute was in violation of the Fourteenth Amendment:

"There remains, therefore, only the contention that it is inconsistent with the due process and equal protection clauses of the Fourteenth Amendment to impose the entire cost of accident loss upon the industries in which the losses arise. But if, as the legislature of Washington has declared in the first section of the act, injuries in such employments have become frequent and inevitable, and if, as we have held in *New York Central R. R. Co.* vs. *White*, *supra*, the state is at liberty, notwithstanding the *Fourteenth Amendment, to disregard questions of fault in arranging a system of compensation for such injuries*, we are unable to discern any ground in natural justice or fundamental right that prevents the state from imposing the entire burden upon the industries that occasion the losses."

* * * * * * *

"We are clearly of the opinion that *a state, in the exercise of its power* to pass

such legislation as reasonably is deemed to be necessary to promote the health, safety, and general welfare of its people, *may regulate the carrying on of industrial occupations that frequently and inevitably produce personal injuries and disability* with consequent loss of earning power among the men and women employed, *and, occasionally, loss of life of those who have wives and children or other relations dependent upon them for support, and may require that these human losses shall be charged against the industry,* either directly, as is done in the case of the act sustained in the *New York Central R. R. Co.* vs. *White*, *supra*, or by publicly administering the compensation and distributing the cost among the industries affected by means of a reasonable system of occupation taxes." (Italics ours.)

In the case of *in re Derinza, etc.*, 229 Mass. 436, 116 N. E. 942, the Supreme Judicial Court of Massachusetts, in considering the rights of alien dependents under the compensation act of that state, held as follows:

"It is urged that non-resident aliens domiciled in a friendly nation are not entitled to the benefit of the provisions established by the Workmen's Compensation Act for the compensation of those dependent upon the earnings of a deceased employee. Cases where awards to such aliens have been sustained by this court without the question

having been raised are passed by and the case is considered on its merits. The starting point in this commonwealth is Mulhall vs. Fallon, 176 Mass. 266, 57 N. E. 386, 54 L. R. A. 934, 79 Am. St. Rep. 309. That case held that non-resident aliens were entitled to the penalty awarded to dependents by the Employers' Liability Act against an employer wrongfully causing the death of an employee. The reasons for that decision are there set forth at length. The same reasoning has since led to a similar decision by the Supreme Court of the United States respecting the federal Employers' Liability Act (McGovern vs. Phila. & Reading R. R., 235 U. S. 389, 35 Sup. Ct. 127, 59 L. Ed. 283, 8 N. C. C. A. 67, and by the Court of King's Bench in England respecting the English Employers' Liability Act (Davidson vs. Hill (1901), 2 K. B. 606). To the same effect are Cetofonte vs. Camden Coke Co., 78 N. J. Law 662, and cases collected at page 669, 75 Atl. 913, 27 L. R. A. (N. S.) 1058. Atchison, Topeka & Santa Fe Ry. vs. Fajardo, 74 Kan. 314, 86 Pac. 301, 6 L. R. A. (N. S.) 681, and Kellyville Coal Co. vs. Petraytis, 195 Ill. 215, 63 N. E. 94, 88 Am. St. Rep. 191. There is no sound distinction in principle between Mulhall vs. Fallon and the case at bar. The difficulties of investigating the facts as to the dependency of non-resident aliens, the temptation to fraud, and the obstacles as to making pay-

ments, urged by the insurer against this construction, appear to be no greater in one class of cases than in the other. So far as these circumstances afford opportunities for overreaching, they are legislative rather than judicial questions. *There is in the words of our act no exclusion from its benefits of those dependents who are non-resident aliens*, as is the case in the statutes of some other jurisdictions. See, for example, Gregutis vs. Waclark Wire Works, 86 N. J. Law 610, 92 Atl. 354. *This omission, in view of the investigation of the legislation of other states which preceded the enactment of our statute, is a circumstance to be considered.* The theory of the Workmen's Compensation Act is a kind of insurance against accident. The Massachusetts compensation law has been characterized as 'an elective compensation insurance law giving compensation for all injuries arising out of employment,' with the exceptions not now pertinent. Report of Commission on Compensation for Industrial Accidents, 1912, p. 46. *Insurance money naturally goes to the beneficiary regardless of geographical boundaries of residence.* The deceased employee, although an alien, if he had lived, manifestly would have been entitled to the benefits of the act. *The quasi accident insurance goes by the act to those to whom naturally the deceased would have made real accident insurance payable if he had*

contracted for it, namely, to those dependent upon his earnings for support. It would be difficult to read into the act by construction an exception adverse to the claims of non-residents who are not alien enemies. This is a quite different question from holding that the act does not by its terms have force as to injuries received beyond the territorial limits of the state, as in Gould's Case, 215 Mass. 480, 4 N. C. C. A. 60, 102 N. E. 693, Ann. Cas. 1914 D. 372. *The result is that aliens who are residents of friendly nations and who are dependents and otherwise within the terms of the act are not barred from compensation solely by reason of alienage.* This conclusion is in accord with other decisions upon statutes which do not expressly exclude non-resident aliens from their operation, and are thus in this respect like our act. Kruz vs. Crow's Nest Pass Coal Co., 1912 A. C. 590; Victor Chemical Works v. Industrial Board, 274 Ill. 11, 19-22, 113 N. E. 173; Western Metal Supply Co. vs. Pillsbury, 172 Cal. 407, 416, 156 Pac. 491, Ann. Cas. 1917 E. 390." (Italics ours.)

From the foregoing it may be seen that the courts do not discriminate between cases involving negligence and claims under workmen's compensation acts in determining the rights of non-resident aliens to receive damages or death benefits. Both rights are, by the foregoing decision, left to the states to

determine and the states, by their inherent police powers, have the right to award non-resident aliens the privilege of recovering damages for negligence or death benefits as a part of compensation.

See also,

Second Employers' Liability Cases, 223 U. S. 47–53;
Hawkins vs. *Bleakley*, 243 U. S. 210;
Middleton vs. *Texas Power and Light Co.*, 249 U. S. 152;
Arizona Copper Co. vs. *Hammer*, 250 U. S. 400.

(b) The right of a state to treat aliens upon a basis of equality with citizens is sustained by the "equal protection of the laws" clause of the Fourteenth Amendment of the Federal Constitution.

The "Workmen's Compensation, Insurance and Safety Act of 1917" of California, which does not discriminate against aliens and under which death benefits have been allowed and paid to non-resident alien dependents of resident alien employees who have suffered death as a result of industrial injuries, is in full accord and harmony with the constitution of the United States.

The Fourteenth Amendment of the federal constitution provides that no state shall "deny to *any person* within its jurisdiction the equal protection of the laws."

In this case the deceased employee was within the jurisdiction of the State of California. He had entered that jurisdiction and sought employment, which at the time of his death was with the Madera Sugar Pine Company. We have the right to assume that, in entering the State of California, the deceased did so with full knowledge of the benefits conferred on employees and their dependents by the California "Workmen's Compensation, Insurance and Safety Act of 1917," that he was attracted by and entered employment in the knowledge of the fact that under the law, if injured in employment, he would be entitled to compensation, and that, if the injury resulted in death, his dependents would be entitled to death benefits.

As a lawful resident of the state the deceased was within the protection of the above quoted amendment of the federal constitution and entitled to invoke its protection.

This court has determined that the equality clauses of the amendment "are universal in their application, to all persons within the territorial jurisdiction, without regard to any difference of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

Yick Wo vs. *Hopkins*, 118 U. S. 356, 6 Sup. Crt. 1064;

Truax vs. *Raich*, 239 U. S. 33, 37 Sup. Crt. 7;
Wong Wing vs. *U. S.*, 163 U. S. 228–242, 16 Sup. Crt. 977;
U. S. vs. *Wong Kim Ark*, 169 U. S. 649–695, 18 Sup. Crt. 456;

See also:

Vietti vs. *Geo. K. Mackie Fuel Co.*, 109 Kan. 179, 197 Pac. 881.

Therefore one of the "rights" to which the deceased employees were entitled was "the equal protection" of their dependents in event of their deaths through industrial injury. This right, granted by the California statute by special mention, constituted personal property and the employees, whose dependents are defendants in error here, can not be deprived of that right without violation of the "equal protection of the laws" clause of the Fourteenth Amendment.

In the case of *Southwestern Surety Ins. Co.* vs. *Vickstrom et al.*, ___ Tex. Civ. App. ___, 203 S. W. 389, the insurance company contended that the claimants, who were non-resident aliens, were not entitled to compensation upon the ground that "being citizens of a foreign country and residing therein, they were not beneficiaries, and not entitled to the compensation, because citizens of the United States were not accorded like privi-

leges in their country." The court awarded compensation and on appeal the judgment was affirmed. We quote from the decision of the Court of Civil Appeals as stating the law of the cases at bar.

> "The fact that the plaintiffs in this case are aliens constitutes no bar to their recovery, since neither under the Workmen's Compensation Act, nor under the general law of this state, are they denied the right to inherit. The cause or causes of action arising in their favor under the Workmen's Compensation Act constitute personal property, and both under this act and the common law and general laws of this state aliens may inherit same regardless of whether similar rights are accorded citizens of this country in the country or countries of such aliens. Acts of 1913, page 429, sec. 8, part 1; article 5246kk, Vernon's Stayles' Civil Statutes 1914; article 2461 Vernon's Sayles' Civil Statutes 1914; *Franco-Texas Land Co.* vs. *Chaptive* (Sup.) 3 S. W. 31; *McGovern* vs. *Railway Co.*, 235 U. S. 389, 35 Sup. Ct. 127, 59 L. Ed. 283; Caliendo's Case, 219 Mass. 498, 107 N. E. 370; *Vujic* vs. *Youngstown Sheet & Tube Co.* (D. C.) 220 Fed. 290; State ex rel. *Crookston Lbr. Co.* vs. *District Court*, 131 Minn. 27, 154 N. W. 509. Where there is no provision in the Compensation Act denying benefit of such to aliens, resident or non-resident, such aliens stand upon the

same footing as citizens of this state, and are entitled to full benefits of such act. Bradbury on Workmen's Compensation, vol. 1, p. 582; *Bouthron* vs. *Light & Fuel Co.*, 8 Ariz. 129, 71 Pac. 914, 61 L. R. A. 563, specially in point; *Anastasakas* vs. *Contracting Co.*, 51 Wash. 119, 98 Pac. 93, 21 L. R. A. (N. S.) 267, 130 Am. St. Rep. 1089; *Romano* vs. *Brick & Pipe Co.*, 125 Iowa, 591, 101 N. W. 437, 68 L. R. A. 132, 106 Am. St. Rep. 323, 2 Ann. Cas. 678. The plea of alienage is not favored in law. *Anastasakas* vs. *Contracting Co.*, 51 Wash. 119, 98 Pac. 93, 21 L. R. A. (N. S.) 267, 130 Am. St. Rep. 1089, 8 Neg. & Com. Cas. 67; *Haurick* vs. *Haurick*, 61 Tex. 604, 605. Article 15 of Vernon's Sayles' Civil Statutes, relating to aliens, has no application whatever to the Workmen's Compensation Act, and in no event can be construed to limit, abridge, or deny the rights of aliens to the benefit and the right to inherit under said Compensation Act."

(c) Such right is sustained by the fact that the states, in some cases, may be compelled by treaties between the United States and foreign nations to confer such equality of rights.

What the states may be compelled to do by law or treaty made by the Federal Government, they may do on their own initiative.

The Federal Constitution provides in the second clause of Article VI as follows:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Under this provision, a state which limited the rights of alien dependents would be compelled to disregard such limitations in case a treaty granting "equal rights" to citizens of each of the contracting parties, existed between the United States and the nation of which such alien dependents were citizens.

> *Vietti* vs. *Geo. K. Mackie Fuel Co.*, 109 Kan. 179, 197 Pac. 881.

It therefore must be conceded that a state may anticipate treaty concessions and grant to aliens rights equal to those of resident citizens without violation of the Fourteenth Amendment of the Federal Constitution.

The Federal Constitution being silent concerning the rights of states to protect or limit the privileges of aliens, the rule of law has been established that non-resident aliens are entitled to such privileges as may be conferred

upon them by state statutes, but no duties can be imposed upon them.

Mulhall vs. *Fallon*, 176 Mass. 266, 57 N. E. 386;

Kaneko vs. *Atchison, T. & S. F. Ry. Co.*, 164 Fed. 263.

3. THE RIGHT OF A STATE TO CONFER EQUALITY OF RIGHTS UPON NON-RESIDENT ALIENS WITH RESPECT TO DEATH BENEFITS UNDER WORKMEN'S COMPENSATION ACTS, IS SUSTAINED BY ANALOGY BY THE ESTABLISHED RIGHT OF THE STATES TO CONFER UPON NON-RESIDENT ALIENS RIGHTS OF ACQUISITION AND INHERITANCE OF REAL AND PERSONAL PROPERTY OF DECEDENTS DYING IN SUCH STATES.

Section 17 of Article I of the California Constitution provides, in part, as follows:

> "Foreigners, of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of all property, other than real estate, as native born citizens."

With this constitutional provision in existence the California legislature enacted Sec.

377 of the Code of Civil Procedure, which provides:

> "When the death of a person, not being a minor, is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."

This statute was interpreted as conferring the right of maintaining an action and recovering damages upon non-resident alien heirs.

> *Kaucko* vs. *Atchison, T. & S. F. Ry. Co.*, 164 Fed. 263.

In interpreting Sec. 671 of the Civil Code of California, which provides that:

> "Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this state."

it was held that the code provision extended to a non-resident alien the right to inherit real estate within the State of California.

> *Blythe* vs. *Hinckley*, 127 Cal. 431, 436; 59 Pac. 787;
> *State* vs. *Smith*, 70 Cal. 153, 12 Pac. 121.

This decision was affirmed by this court in *Blythe* vs. *Hinckley* (180 U. S. 383, 21 Sup. Crt. Rep. 390) and the court held (127 U. S. 341) that a state can confer upon non-resident

aliens the right to inherit real estate; that *the privilege was purely a question of local law, to be granted or denied by the state*, except in so far as it might interfere with Federal treaties.

See

U. S. vs. *Fox*, 94 U. S. 315;
Hauriek vs. *Patrick*, 119 U. S. 156;
Hutchinson Inv. Co. vs. *Caldwell*, 152 U. S. 65.

As was said in the case of *Southwestern Surety Ins. Co.* vs. *Vickstrom, et al., supra*:

> "* * * The cause or causes of action arising in their favor, under the Workmen's Compensation Act, constitute personal property, and both under this act, and the common law and general laws of this state, aliens may inherit same regardless of whether similar rights are accorded citizens of this country in the country or countries of such aliens."

This right of inheritance is therefore the right of the dependents of the two deceased employees in the cases at bar, and comes within the decisions above quoted.

Thus the doctrine seems to be well established that the legislature, while it can not abridge property rights or other privileges granted to aliens in a state constitution, may extend such rights and privileges, even to the

degree of extending them to non-resident aliens.

See cases above cited and

Carrasco vs. *State*, 67 Cal. 385, 7 Pac. 766;
Lyons vs. *State*, 67 Cal. 380, 7 Pac. 763;
State vs. *Rogers*, 13 Cal. 159.

VII. CONCLUSION.

We therefore respectfully contend that the decision of the court below should be affirmed by this court.

A. E. Graupner,
Warren H. Pillsbury,
Counsel for Defendants in Error.

MADERA SUGAR PINE COMPANY *v.* INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Nos. 235 and 296. Argued March 7, 1923.—Decided June 4, 1923.

1. A state workmen's compensation act otherwise valid, does not, by requiring that compensation for the accidental death of an employee, irrespective of negligence, be paid to his non-resident alien dependents, deprive the employer of property without due process, in violation of the Fourteenth Amendment. P. 501.
2. The constitutionality of acts of this kind does not depend upon the compensation's being limited to citizens or residents of the State. *Id.*

Affirmed.

ERROR to judgments of the Supreme Court of California denying writs to review two awards made by the State Industrial Accident Commission.

Mr. H. E. Barbour, for plaintiff in error, submitted. *Mr. William C. Ring* was also on the brief.

Mr. Adolphus E. Graupner, with whom *Mr. Warren H. Pillsbury* was on the brief, for defendants in error.

MR. JUSTICE SANFORD delivered the opinion of the Court.

These two cases were heard together. They involve a single question as to the constitutionality of the Workmen's Compensation Act of California.

This is a compulsory compensation act establishing in all except certain employments, an exclusive system governing compensation for injuries to employees resulting in disability or death. By its terms liability exists against an employer for the compensation therein pro-

vided, in lieu of any other liability whatsoever to any person, and "without regard to negligence," for any injury sustained by his employees, including aliens, arising out of and in the course of the employment, not caused by their intoxication or intentionally self-inflicted; such compensation being recoverable by the employees, according to a prescribed scale gauged by their previous wages and the extent of their disability, or, if the injuries cause death, by those dependent upon them for support, according to prescribed death benefits gauged by the previous wages and the extent of the dependency of the beneficiaries. Laws, California, 1917, c. 586; amendment, Laws, 1919, c. 471. See *Western Indemnity Co.* v. *Pillsbury*, 170 Cal. 686, 695; and *North Alaska Salmon Co.* v. *Pillsbury*, 174 Cal. 1. Non-resident alien dependents are included within its provisions as to death benefits. See *Western Supply Co.* v. *Pillsbury*, 172 Cal. 407, 416.

In the present cases, two laborers employed by the Madera Sugar Pine Company in California, having sustained, without negligence of the Company, fatal injuries, arising out of and in the course of their employment, their partially dependent mother and sisters, respectively, being aliens residing in Mexico, were awarded by the Industrial Accident Commission, in appropriate proceedings under the act, death benefits against the Company as therein prescribed.

Petitions for writs to review these awards in accordance with the state practice were denied by the Supreme Court of California; and thereupon, on the application of the Company, these writs of error, with supersedeas, were allowed by the Chief Justice of that court. See *Napa Valley Co.* v. *Railroad Commission*, 251 U. S. 366, 372.

The sole contention of the Company here is that the act, as construed and applied in these cases, requiring it to make compensation for the death of employees, occurring without fault, to their non-resident alien dependents,

operates to deprive it of property without due process and in violation of the Fourteenth Amendment.

The argument is, in substance, that while an employer may lawfully be compelled to make compensation to the resident dependents of employees whose death was caused by no legal wrong, on the ground that the State is interested in preventing such dependents from becoming public charges, this justification does not extend to the case of foreign dependents, who would not become public charges of the State; and, therefore, that an act requiring compensation to be made to such foreign dependents in the absence of legal wrong, is not a reasonable exercise of the police power of the State. This argument, however, erroneously assumes that in a compensation act of this character the constitutionality of the provision for death benefits is to be separately determined, independently of the general scope of the act, and solely with reference to the relation of the beneficiaries to the employers and to the State.

Provision is universally made in workmen's compensation acts for compensation not only to disabled employees but to the dependents of those whose injuries are fatal. And the two kinds of payment are "always regarded as component parts of a single scheme of rights and liabilities arising out of" the relation of employer and employee. *Western Metal Supply Co.* v. *Pillsbury*, 172 Cal. 407, 414. The object of such acts "is single—to provide for the liability of an employer to make compensation for injuries received by an employee", whether to the employee himself or to those who suffer pecuniary loss by reason of his death. *Huyett* v. *Pennsylvania Railroad*, 86 N. J. L. 683, 684.

This Court has in several cases sustained the constitutionality of workmen's compensation acts, from which the California Act in its constitutional aspects is not distinguishable, establishing exclusive systems governing the

liabilities of employers in hazardous occupations in respect to compensation for industrial accidents to employees resulting in disability or death, and requiring compensation to be paid to a disabled employee or to his surviving dependents in accordance with prescribed scales gauged upon the previous wage and the extent of the disability or dependency. *New York Central Railroad* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Ward & Gow* v. *Krinsky*, 259 U. S. 503. And see *Arizona Employers' Liability Cases*, 250 U. S. 400. These acts were sustained, in their entirety, without any separate reference to the status of the dependents—although in the *White Case* the right of a widow to compensation was directly involved—upon the broad ground that the State, by reason of its public interest in the safety and lives of employees engaged in such occupations, may provide, in the just and reasonable exercise of its police power, that the loss of earning power sustained by an employee through an industrial accident resulting in his disability or death, constituting a loss arising out of the business and an expense of its operation, shall, in effect, be charged against the industry after the manner of casualty insurance, and to that end require the employer to make such compensation as may reasonably be prescribed for the loss thus incurred in the common enterprise, irrespective of the question of negligence, to the injured employee or to his surviving dependents. *New York Central Railroad* v. *White* (pp. 203, 207); *Mountain Timber Co.* v. *Washington* (p. 243); *Ward & Gow* v. *Krinsky* (p. 512). That is to say, as shown by these decisions, the compensation to dependents is merely a part of the general scheme of compensation provided by these acts for the loss resulting from the impairment or destruction of the earning power of an employee caused by an industrial accident, which in case of his death is paid to those whom he had supported by his earnings and

who have suffered direct loss through the destruction of his earning power. And it is clear that the underlying reason of these decisions applies alike to all dependents who by his death have been deprived of their support, whether they be residents or non-residents of the State.

If an employment be such as to fall within the State's lawmaking jurisdiction and the legislature determines that the employment of labor therein entails upon the employer certain responsibilities toward the persons performing the labor and those dependent on them, there is no constitutional provision requiring that the benefits of such legislative scheme be limited to citizens or residents of the State. *Western Metal Supply Co.* v. *Pillsbury, supra,* p. 416. Just as accident insurance goes to the beneficiary regardless of his residence, so the *quasi*-insurance of a workmen's compensation act goes to those to whom the employee would naturally have made such insurance payable: to himself, although an alien, if he be disabled; and to those dependent upon his earnings for support, if he be killed. *Derinza's Case,* 229 Mass. 435, 441.

A strong argument in support of the view that as part of a system of compulsory compensation established by a State to protect employees from loss through industrial accidents, the death benefits may properly be extended to alien dependents, is also found, by analogy, in the reasons stated in various decisions holding that employers' liability acts authorizing recovery for the death of employees caused by negligence, inure to the benefit of alien as well as resident beneficiaries. Thus, as the Federal Employers' Liability Act, in order to protect the life of the employee gives compensation to those who had relation to it, it makes no difference where they may reside; it being " the fact of their relation to the life destroyed that is the circumstance to be considered, whether we

consider the injury received by them or the influence of that relation upon the life destroyed." *McGovern* v. *Philadelphia Railway*, 235 U. S. 389, 400. Such employers' liability statutes are designed to benefit all employees. *Vetaloro* v. *Perkins* (C. C.), 101 Fed. 393, 397. They have the interest of the employees in mind and are primarily for the protection of their lives; the action is given to the beneficiaries on their account and they are not intended to be less protected if their beneficiaries happen to live abroad. *Mulhall* v. *Fallon*, 176 Mass. 266, 269. "Many of these toilers in mines, on public works, railroads and the numberless fields of manual labor, receive a moderate wage and are compelled to leave in foreign lands those who are dependent upon them and for whose support they patiently work on, indulging the hope that ultimately they may bring to these shores a mother, or wife and children. . . . The statute not only benefits the survivors, but protects the laboring man . . . The laborer, leaving wife and children behind him and coming here from abroad, has a right to enter into the contract of employment, fully relying upon the statute." *Alfson* v. *Bush Co.*, 182 N. Y. 393, 398, 399; *Kaneko* v. *Atchison Railway* (D. C.), 164 Fed. 263, 266.

For the foregoing reasons we conclude that the Workmen's Compensation Act of California, as it has been construed and applied in these cases, in providing for death benefits to the non-resident alien dependents of employees meeting death as the result of industrial accidents, is not in conflict with the Fourteenth Amendment.

Affirmed.